IMPROVING ENVIRONMENTAL ASSESSMENT IN ONTARIO: A FRAMEWORK FOR REFORM

VOLUME I

A Report Prepared by the Minister's Environmental Assessment Advisory Panel – Executive Group

March 2005

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EXECUTIVE SUMMARY

The Executive Group has concluded that Ontario's *Environmental Assessment Act* (EA Act) is fundamentally sound. All Sector Tables and all stakeholders share this view. Significantly, the Executive Group did not receive any input suggesting that the EA Act should be repealed.

At the same time, the Executive Group has identified a significant "disconnect" between the provisions of the EA Act (especially the statement of purpose), and the actual "on the ground" delivery of Ontario's EA program. In particular, the Executive Group has concluded that there are significant policy gaps, procedural inconsistencies, and administrative shortcomings that must be addressed as soon as possible. Accordingly, the bulk of the Executive Group's recommendations involve regulatory, policy and administrative reforms that are necessary to ensure that the EA program remains viable and relevant as Ontarians face the challenges and opportunities of the 21st century.

The Executive Group's suggested reforms are responsive to the Minister's request that the EA Advisory Panel develop recommendations that would 'revitalize, rebalance and refocus' Ontario's EA planning and decision-making process, while also ensuring the timely approval of undertakings which provide positive contributions to Ontarians' quality of life. However, in attempting to fulfill these goals, the Executive Group quickly realized that its recommendations would have to resolve competing considerations and dynamic tensions within Ontario's EA program.

On the one hand, there is a need for an EA program that is expeditious and efficient, and that does not unduly delay necessary undertakings. On the other hand, the EA program must be robust and consultative in nature, and should facilitate undertakings that provide environmental benefits, mitigate or avoid negative biophysical and socio-economic impacts, and support livable communities and a strong provincial economy. Accordingly, after carefully considering the Sectoral Tables' reports and comments, input from MOE staff, and submissions from members of the public regarding EA reform, the Executive Group developed a series of key recommendations, each of which we believe strikes an appropriate balance between a "fast" EA process and a "rigorous" EA process. A key mechanism for ensuring this balance is the application of clear, consistent and transparent rules.

The Executive Group's principal recommendations may be summarized as follows:

- The MOE should develop guiding EA principles that are entrenched in a policy guideline issued under the EA Act. We suggest that, within these principles, the following goals, objectives and values be included:

    - sustainability benefits;
    - clear, consistent, predictable and timely;
    - transparent;
    - public participation;
    - one project, one integrated process;
    - the precautionary principle;

  - the ecosystem approach;
  - based on good data, good science and sound engineering;
  - environmental protection; and
  - 'avoidance first'.

- The MOE should establish sector-specific working groups to develop sectoral policies that identify and prioritize "green projects", and to develop sectoral EA procedures that are clear, consistent, predictable and timely. The planning, consultation and documentation requirements should reflect the environmental benefits and risks associated with each project;

- The MOE should establish EA application fees, and should direct such revenue to prescribed EA activities;

- The Ontario government should establish a high-level office that is expressly mandated to help facilitate "green projects" within the EA process and other statutory approval regimes;

- The Ontario government should develop appropriate protocols and procedures that more effectively involve First Nations and aboriginal communities in the EA process;

- The MOE should establish an independent provincial advisory body in order to provide expert advice and solicit public views on various EA matters, such as community acceptance of proposed undertakings, and effects/effectiveness monitoring;

- The MOE should ensure greater use of alternative dispute resolution (ADR) techniques throughout the EA process, and should refer certain undertakings to the ERT for public hearings that are consolidated with other hearing requirements where applicable;

- The MOE should amend Class EA procedures and the Electricity Projects Regulation (O.Reg.116/01 and Guide) to create opportunities to seek summary rulings from the ERT on contentious matters such as bump up/elevation requests;

- The MOE should establish an enhanced EA website or online registry to facilitate proponent and public access to EA documents and project status information; and

- The MOE should expand its EA monitoring, inspection and training activities to ensure compliance with the EA Act, regulations, or terms and conditions within approvals.

The cornerstone of the Executive Group's vision for EA reform, and the central innovation of this Report, is the first five recommendations proposed in this Report and their link to all subsequent recommendations. These primary recommendations articulate the need for: 1) overarching general EA principles; 2) sector-specific EA policies; and, 3) sectoral EA procedures which are predicated upon the nature and extent of the anticipated benefits and negative impacts of the undertakings in each sector, and which prescribe an appropriate EA planning and decision-making process in order to evaluate the significance of those outcomes.

Our proposed procedures create rules that permit the interests of all major stakeholders to be respected. Proponents get expeditious timelines and increased efficiency; members of the public get more notice and resources and thus increased effectiveness. Proponents get focus and predictability; members of the public get increased rigour. For government, the procedures represent a shift from broad discretion to clear rules. Where implemented, these rules will increase and improve implementation of provincial policy. Less discretion and more rules will provide more timely decision-making and thus greater efficiency of human resources. Less discretion and more rules will also provide increased transparency. Put more colloquially, the proposed reforms deliver to government more steering and less rowing. The Executive Group concludes that the first five interrelated recommendations form the critical foundation upon which all other EA reforms must be built.

Since Ontario's EA program began in the mid-1970s, there has existed considerable debate and controversy surrounding various legislative, regulatory and administrative issues under the EA Act. As a result of our deliberations, the Executive Group can report that this debate still exists among some proponents and EA stakeholders at the present time. Nonetheless, there appears to be strong support for the general package of recommendations being proposed by the Executive Group, as discussed above. It should be further noted that this reform package represents a carefully crafted set of integrated recommendations, rather than a "wish list" of unrelated, stand-alone suggestions that can be selectively or independently pursued.

For example, recognizing the limited availability of provincial revenue to fund the proposed provincial advisory body, the Executive Group has identified the need to introduce a system of EA fees to generate revenue that can be specifically directed to EA activities undertaken by the advisory body, Environmental Assessment and Approvals Branch (EAAB), Environmental Review Tribunal (ERT), or other persons or agencies. Furthermore, while some of our recommendations will require more resources than are currently applied to EA, several other recommendations will save considerable resources and time for all participants in the process. In general, increasing the clarity of relevant policies, and enhancing the transparency and predictability of the process, will save the Ministry, proponents and other participants both money and time currently spent navigating an often confusing and unpredictable set of procedures under the existing EA program. In other words, the cost of doing nothing or maintaining the status quo will not only cost time and money, but also will inhibit investment and preclude the many ancillary benefits associated with an improved EA process especially for green projects.

As these and other examples illustrate, the Executive Group's recommendations are carefully tied together as an integrated reform package which should not be implemented in a piecemeal or disjointed manner. The Executive Group firmly advises the Minister to adopt these recommendations. We are confident that the Minister shares our interest in and commitment to improving and strengthening the EA program, and the members of the Executive Group look forward to assisting the Minister in the further refinement and implementation of the reforms outlined in this Report.

EXECUTIVE GROUP MEMBERS

David Estrin

David Estrin has for over 30 years specialized in environmental law as an advocate, author of authoritative environmental law texts, and professor (part time) in law and environmental studies faculties. In his practice as a senior partner with Gowlings, a national law firm, Mr. Estrin has advised and acted as counsel for development proponents, municipalities, crown corporations, financial institutions, aboriginal people and environmental groups. He has assisted in policy development and drafting of key environmental assessment and environmental protection laws in Ontario, Alberta and for the UN. He has been counsel in many precedent setting cases. Mr. Estrin was a founder and first general counsel for the Canadian Environmental Law Association (CELA).

Alan Levy

Alan D. Levy graduated from the Faculty of Law (University of Toronto) in 1970 and began practice in 1972 in Toronto, primarily in the area of civil and family litigation. He was among the founding members at the Canadian Environmental Law Association (CELA) in 1970. He is currently the Chair of its Board of Directors and Director of its Environmental Assessment Project. During the period 1990-1998, he served as a Vice-Chair of the Ontario Environmental Assessment Board and member of the Environmental Appeal Board (now combined and called the Environmental Review Tribunal), and Hearing Officer in the Niagara Escarpment Hearing Office. Since 1998 he has resumed private practice with a focus on dispute resolution (mediation, negotiation and arbitration) and environmental law. He has served as Chair of the Environment Section of the ADR Institute of Ontario and since 2000 has been Director of the Environmental Law Practicum program at the Faculty of Law (University of Toronto).

Richard Lindgren

Mr. Lindgren is a staff lawyer with the Canadian Environmental Law Association (CELA), and has represented individuals and citizens' groups in the courts and before tribunals on various environmental assessment matters. He has written extensively on federal and provincial environmental assessment, and is an editor of the *Canadian Environmental Law Reports*. Mr. Lindgren has been a member of the Attorney General's Advisory Committee on Class Action Reform, the Environment Minister's Task Force on the Environmental Bill of Rights, and the Environmental Review Tribunal's Advisory Committee. He teaches environmental law at Queen's University Faculty of Law and at Trent University.

Rod Northey

Mr. Northey is a partner in Birchall Northey, an environmental law firm that provides litigation, legal and public policy advice to clients across Canada. Mr. Northey practices environmental law exclusively, with particular emphasis on administrative law before the courts and environmental and planning tribunals. Mr. Northey is author of an annotation on federal environmental assessment law and has taught courses on environmental law, advocacy and assessment at the Faculty of Law at the University of Toronto, Osgoode Hall Law School and Ryerson Polytechnic University. Mr. Northey was a member of the 2004 Greenbelt Task Force is also a past president of the Canadian Environmental Defence Fund (now, Environmental Defence Canada).

Dr. Beth Savan (Chair)

Dr. Savan, an environmental scientist, has extensive experience in government, the media, and in academia. For seven years, Dr. Savan directed the Environmental Studies Programs at Innis College, University of Toronto, where she teaches senior level courses. She has just been appointed as the inaugural Sustainability Director at the university and has a cross-appointment as an adjunct Professor in the Geography Department and in the Masters in Planning Program, where she teaches environmental planning. Her recent research and publication activities focus on the topics of community based research, environmental monitoring, citizen science, and community sustainability.

SUMMARY OF RECOMMENDATIONS

(* = recommendation that will save resources for many parties; and, ** = recommendation with direct revenue generation. Page numbers indicate where the recommendation is located in the Report, along with a detailed issue statement and discussion).

KEY RECOMMENDATIONS		
Recommendation 1: ***General Need for Principles, Policies and Procedures***	**Issue:** Need for EA to better address green projects in the waste, energy and transportation sectors	The *Environmental Assessment Act* (EA Act) should deliver major improvements across three sectors – waste, energy, transportation – by immediate attention to three topics set out in detail below: (1) general EA principles within MOE policy guidelines on how to interpret and apply the purpose of the Act to specific undertakings; (2) provincial policies for each sector on what factors contribute to "green" undertakings and thereby merit priority compared to other undertakings in the sector; and (3) prescriptive sector-specific procedures which correlate EA requirements with the degree of societal benefits and environmental risks associated with an undertaking. Page 28.
Recommendation 2: ***EA Act Principles***	**Issue**: Need for guidance on how to interpret and apply the purpose of the EA Act.	In order to ensure that all EA participants – proponents, the public and decision-makers – have a common framework to assess specific undertakings and assign preferences among alternatives, it is essential that more attention be devoted to the purpose of the EA Act. The purpose seeks the "betterment of the people" of Ontario and requires "the protection, conservation and wise management in Ontario of the environment". Based on this broad purpose, a set of general EA principles should be articulated in EA Act policy guidelines for specific application to all decisions made under the EA Act. Page 29.
Recommendation 3: ***Sector-specific Policy*** *	**Issue**: Need for provincial policy which prioritizes "green" undertakings, and	The Government of Ontario should develop sector-specific policies which must be followed under the EA Act, just as the Provincial Policy Statement is issued and applied under the *Planning Act*. These sectoral policies should include a hierarchy of preferences based on degree of benefit and risk

	which addresses need and alternatives.	of impact (e.g. policy preference for renewable energy, public transit, and waste diversion). As an immediate measure the Province should ensure that EA decisions are consistent with PPS provisions respecting renewable energy systems, transit, and waste reduction, reuse and recycling. Page 39.
Recommendation 4: ***Establishment of Sector working groups*** *	**Issue**: Need to establish working groups to develop sectoral policy	The MOE should immediately establish small sectoral working groups for Energy, Transportation and Waste sectors. Members should be experienced in EA to expeditiously develop each sectoral policy, which can be forwarded to the Minister for review and adoption under the EA Act. Page 39.
Recommendation 5: ***EA Procedures***	**Issue:** Need for EA procedures which correlate assessment requirements to the degree of benefit and risk associated with an undertaking.	a) A procedural framework should be developed such that the nature and extent of EA documentation, notification, and planning depend on the environmental benefits and risks associated with a particular undertaking. Undertakings that pose benefits without corresponding risks should be given priority under the EA Act in the sense that their process and approval standards are easier to meet than undertakings that create risks and produce few or no benefits. For each sector, existing Class EA and regulatory instruments should be adapted accordingly. b) Guided by the procedural charts in Chapter 3 and the principle that sector rules should be consistent across sectors, the Minister should ask the proposed working groups to recommend binding rules for EA triggers and processes for each sector. Thus, the procedural charts should be adopted as a future regulation, as amended by working group recommendations that treat similar projects within all sectors consistently. In particular, as suggested by the Waste Sector Table, the waste sector working group should consider the following issues: i. designate certain waste management facilities (e.g. all landfills and incinerators accepting municipal and IC&I waste) as being subject to the EA Act, regardless of proponency; ii. exempt certain facility-related proposals from EA obligations (e.g. Category 1 projects); iii. establish an appropriate EA process for small-scale or less environmentally significant projects within prescribed thresholds or categories; iv. ensure that individual EAs are conducted for large-scale or environmentally significant waste management undertakings; v. provide prescriptive details on undertakings that require the highest level of assessment(e.g., TOR content or category 5 projects); and, vi. compile and update a comprehensive provincial database on waste management. c) Pending the completion of the revised sectoral procedures, as an interim measure the MOE should immediately revise the draft TOR guideline to ensure consistency with this Report (especially in relation to "need" and "alternatives to"), and should post the

		revised TOR guideline on the EBR Registry for public review and comment prior to finalization. Page 42-43.
Recommendation 6: ***Provincial Advisory Body*** *	**Issue**: Need for impartial expert advice on a broad range of EA related matters.	The Minister should establish an independent advisory body to provide advice to the provincial government and solicit public input in relation to EA matters as may be warranted. Page 66.
Recommendation 7: ***Funding for Advisory Body*** **	**Issue**: Financial support for advisory body.	Funding for the advisory body should be drawn, at least in part, from revenues generated from EA application fees (as described below in Recommendation 23). Page 66.
Recommendation 8: ***Public participation***	**Issue**: Finalizing MOE consultation guideline.	The MOE should revise the draft consultation guideline to reflect the recommendations in this report, paying particular attention to the following issues: a) identification of "interested persons" within the meaning of the EA Act; b) provision of timely and effective public notices; c) ensuring public access to relevant documents and information; d) provision of adequate comment periods; e) effective methods and techniques for soliciting public input (including using municipal council proceedings where applicable); f) provision of adequate resources to members of the public to participate meaningfully in the EA process; and g) methods for accommodating public concerns and resolving issues in dispute. Following this revision the MOE should consult widely on their guideline before finalizing. Page 69.
Recommendation 9: ***Public participation***	**Issue**: Public participation rights and responsibilities under the EA Act.	Once the consultation guideline has been finalized, the MOE should organize workshops and undertake other measures to ensure that proponents, participants and agencies understand public participation rights and responsibilities under the EA Act. Page 69.
Recommendation 10: ***Public participation***	**Issue**: First Nations and aboriginal community participation in EA planning and decision-making.	The Ontario government should develop, with First Nations and aboriginal community input, appropriate protocols, procedures and collaborative agreements to facilitate meaningful participation by First Nations and aboriginal communities in the EA planning and decision-making process, particularly in relation to: a) improving notice requirements; b) enhancing comment opportunities; c) resolving funding issues; and d) involving First Nations and aboriginal communities as part of the government review team where appropriate under the EA Act. Page 69-70.

Recommendation 11: *Public participation*	**Issue**: Review options for obtaining or confirming community acceptance (e.g., willing host) for undertakings.	The Minister should request that the advisory body review and report upon options for obtaining or confirming community acceptance (e.g., willing host) of undertakings proposed under individual EAs and Class EAs. At a minimum, the advisory body should be asked to consider whether there is a need for: a) inclusive, resourced local bodies to negotiate, monitor and revise agreements; b) explicit local benefits targeted towards closest neighbours to the site; c) comprehensive efforts to identify and engage diverse groups within the local community at the earliest planning stages; and d) an option to site elsewhere if negotiation efforts fail. Page 70.
Recommendation 12: *Green project facilitator* *	**Issue**: Need for high-level facilitation of 'green projects' through EA process.	The Ontario government should create the office of a provincial process facilitator for green projects. This office will facilitate approval of green projects by: 1) expediting EA and other provincial requirements; and 2) resolving cross-jurisdictional or interministerial issues. Page 78.
Recommendation 13: *Hearings, ADR, mediation*	**Issue:** Finalize MOE draft mediation guideline.	The MOE should revise the draft mediation guideline, and should specifically consider circumstances or criteria when it may be appropriate for the Minister to refer matters to ADR and mediation under the EA Act. One recommended issue to consider is the role of ADR when there is continuing public concern about a project. A one-day mandatory mediation could be considered for use at the end of contentious phases of an EA project before the proponent advances to the next stage or any public right of review (e.g., Part II Order or elevation request) can be exercised. Following the revision the MOE should consult widely on the guideline before finalizing. Page 79-80.
Recommendation 14: *Hearings, ADR, mediation*	**Issue:** Referral of certain individual EA applications to the ERT.	Pending the completion of the sectoral procedural framework, as an interim measure the Minister should ensure that there are public hearings before the ERT on individual EA applications where: a) ADR and mediation efforts have been employed; and, b) there is significant unresolved public controversy about substantive and procedural issues arising from the proposed undertaking. Page 80.
Recommendation 15: *Integration*	**Issue**: Need to integrate PPS and EA.	The Minister should, as soon as reasonably possible, ensure the EA Act: a) adopts by cross-reference the *Provincial Policy Statement* ("PPS") that is issued by Cabinet under section 3 of the *Planning Act*; b) specifies that all statutory decisions under the EA Act shall be consistent with the PPS, as may be amended from time to time; and c) provides that, in cases of conflict between the PPS and EA policies, the latter shall prevail. Page 84.
Recommendation 16: *Integration* *	**Issue**: Need for guidelines on harmonization of CEAA and EA Act.	The MOE should develop, with proponent and EA participant input, clear and concise guidelines that explain when and how the EA Act will be harmonized with CEAA in relation to undertakings that are potentially subject to both statutes. Page 85.

Recommendation 17: *Integration*	**Issue**: Need to amend section 32 of the EBR.	The MOE should amend the general "EA exception" in section 32 of the *Environmental Bill of Rights* ("EBR") to ensure that: a) public notice is provided under the EBR in relation to prescribed instruments that are proposed to implement environmentally significant projects or undertakings which have been approved or exempted under the EA Act; and, b) residents may seek leave to appeal such instruments under the EBR only where the environmentally significant project or undertaking has been approved or exempted under the EA Act without a public hearing. Page 85.
Recommendation 18: *Class Environmental Assessment*	**Issue:** Need for mechanism to resolve issues during project planning under Class EAs or Electricity Projects Regulation.	As an interim measure while considering the recommended procedural reforms, the MOE should create an opportunity for the proponent and public, as well as the Minister, to make summary applications for interim directions (which could include mediation or rulings) from the Environmental Review Tribunal during the preparation of a project-specific Class EA/ESR or screening/review under Electricity Projects Regulation 116/01. Page 90-91.
Recommendation 19: *Class environmental assessment*	**Issue:** Need for procedures to address 'bump-up' (Part II orders) and elevation requests.	The government should create a formal adjudicative process, administered by the ERT, to expeditiously hear and decide applications for 'bump-ups' and elevation requests. Page 91.
Recommendation 20: *Timelines*	**Issue**: Adequacy and enforcement of current timeframes and deadlines under certain regulations.	The MOE should review, with proponent and stakeholder input, the adequacy and enforcement of the current timeframes and deadlines within the Deadlines Regulation (O.Reg. 616/98), approved Class EAs, and the Electricity Projects Regulation (O.Reg. 116/01) and Guide. Page 99.
Recommendation 21: *Timelines*	**Issue**: Amendment to extend prescribed deadlines where warranted.	The MOE should develop, with proponent and stakeholder input, regulatory amendments that authorize the EAAB Director to extend prescribed deadlines where warranted, provided that: a) written notice of the extension, with reasons, is provided to the proponent and stakeholders; and b) the extension notice identifies a new final deadline for the making of the EA decision under consideration. Page 99-100.
Recommendation 22: *EA Website* *	**Issue**: Transparency, clarity and timely access to information.	The MOE should establish a new EA website to include means to enable proponents and stakeholders to electronically track the status of the matter under consideration (i.e. government review, bump-up request, etc.) and to access information or supporting documentation about the matter, and other documentation relating to Ontario's EA program. Page 100.
Recommendation 23: *Fees* **	**Issue**: Need for fees to support EA program delivery and efficiency.	The EA Act should be amended to authorize the making of regulations that prescribe fees (or the method for calculating fees) for certain matters under the Act. Fee revenue should be directed towards EA program delivery and efficiency. Page 104.
Recommendation 24: *Fees*	**Issue**: Development of fee	Once authorized to impose fees under the EA Act, the MOE should develop, with proponent and stakeholder input, a

	schedule.	regulation that establishes an appropriate fee schedule for EA actions including hearings. Such regulation should also govern the use, retention, payment or refund of prescribed fees. Page 104.
Recommendation 25: *Fees*	**Issue**: Need for dedicated EA funding.	Application fees collected under the EA Act should be used to fund or undertake specified EA-related activities. Page 104.
Recommendation 26: *Monitoring and reporting*	**Issue**: Improving effects/effectiveness monitoring and reporting.	The MOE should, with public input, revise its draft EA compliance strategy, especially in relation to cumulative impacts. Among other things, the revisions should consider the following tools: a) third party audits; b) third party notification; c) electronic access to monitoring reports on proponent websites (or a new EA registry to be established by MOE: see Recommendation 22); d) "model" monitoring/reporting provisions that can be imposed as conditions for approval in the context of individual EAs, Class EAs, declaration (exemption) orders, and other EA decisions; e) periodic review and/or revision of terms and conditions in instruments issued under the EA Act to ensure they remain current, effective and enforceable. Page 106.
Recommendation 27: *Monitoring and reporting* **	**Issue**: Amendments to EA Act re: powers and roles of provincial officers.	The MOE should, with public input, develop amendments to the EA Act that: a) provide provincial officers with inspection and enforcement powers that are currently available under other environmental laws; b) increase fines to make them consistent with fine levels that are currently available under other environmental laws; c) empower the courts to impose innovative sentencing orders that are currently available under other environmental laws; d) impose a "reasonable care" duty upon corporate officers and directors to ensure compliance with the Act, regulations, or terms and conditions in EA approvals; and e) prescribe a two-year limitation period for the prosecution of offences under the EA Act. Page 106.
Recommendation 28: *Monitoring and reporting*	**Issue**: Development of EA compliance programs and procedures.	The MOE should, with public input, develop EA compliance programs and procedures that include substantive guidance on: a) voluntary abatement and other measures to address relatively minor problems where the non-compliance poses no direct risk to the environment; b) mandatory abatement and other measures to address all other instances of non-compliance with the Act, regulations or terms and conditions in EA approvals; c) prosecutions to enforce EA obligations imposed by law; and, d) inspection protocols (i.e. frequency, follow up measures, MOE record-keeping, announced vs.

		unannounced visits, integration with MOE district work plan inspections, etc). Page 106-107.
Recommendation 29: ***Monitoring and reporting***	**Issue**: Need for compliance training and education programs.	The MOE should ensure that the finalized EA compliance strategy is accompanied by appropriate training and educational programs for all MOE staff involved in EA monitoring, inspection and enforcement activities. Page 107.
Recommendation 30: ***Monitoring and reporting***	**Issue**: Review/revise MOE administrative practices.	The MOE's current administrative practices/procedures should be reviewed and/or revised to ensure that they adequately reflect or integrate the essential elements of the finalized EA compliance strategy. Page 107.
Recommendation 31: ***Monitoring and reporting***	**Issue**: Review/upgrade current EAIMS.	The MOE's current EAIMS (environmental assessment information management systems) should be reviewed and/or upgraded to ensure that it is electronically accessible by all MOE regional and district offices. Page 107.
Recommendation 32: ***Training*** **	**Issue**: Need for EA training and educational programs on cost-recovery basis.	The MOE should develop, with proponent and stakeholder input, appropriate EA training and educational programs under the EA Act, and should recover the cost of developing and delivering EA training and educational programs by charging appropriate fees to participants in such programs. The MOE should ensure that EA training and educational programs are available to all Ontario government staff (including but not limited to MOE EAAB, Regional Office, and District Office staff) involved in the delivery of the province's EA program. Page 114-115.
Recommendation 33: ***EA Review Protocols***	**Issue**: Need for cross-ministry/agency protocols.	The MOE should develop appropriate collaborative protocols with other provincial ministries and agencies in order to ensure that government reviews under the EA Act are undertaken by qualified persons in accordance with specified parameters and timeframes. Page 115.
Recommendation 34: ***Consolidated approvals*** *	**Issue:** Need to permit consolidated hearings of EA and other approvals.	The MOE should amend regulations under the *Consolidated Hearings Act* to facilitate one consolidated hearing for matters subject to EA and other approvals, (e.g., *Environmental Bill of Rights, Aggregate Resources Act, Ontario Water Resources Act*). Page 119.
Recommendation 35: ***Relationship between EPA and EA*** *	**Issue**: Need to permit consolidated hearings of EA and EPA approvals.	The MOE should amend O.Regs. 206/97 and 207/97 to remove the automatic prohibition on EPA and OWRA hearings to ensure that: (a) mandatory and/or discretionary hearings under the EPA and OWRA may be held in relation to waste disposal sites, waste management systems and sewage works which are subject to approval (or exempted) under the EA Act, depending upon the environmental significance (i.e. risks and benefits) posed by such facilities; and (b) joint board hearings under the EA Act, EPA and/or OWRA are available pursuant to the *Consolidated Hearings Act* where applicable. Page 119.
Recommendation 36: ***Refinements to the Electricity Projects Regulation and Guide***	**Issue**: Need to review and refine Electricity Projects Regulation and Guide.	The MOE should post a notice on the EBR Registry to solicit public comment on changes to the Electricity Projects Regulation and Guide proposed by Section 5 of the Energy Table Report. Page 122.

Recommendation 37: ***Refinement to Municipal Class EA***	**Issue:** Need to facilitate municipal transit projects.	In collaboration with the Municipal Engineers Association (MEA), the MOE should immediately initiate amendments to the MEA Class EA to include municipal transit projects. Page 122.
Recommendation 38: ***Research undertakings***	**Issue:** Need to review and revise research exemption category	The MOE should review and revise the "research" exemption under the EA Act to include emerging green technologies, and to clearly define appropriate parameters on "research" undertakings (i.e. temporal limits or operational capacity). Page 123.
RECOMMENDATIONS REQUIRING FURTHER CONSULTATION/REVIEW		
Recommendation 39: ***General Regulation***	**Issue:** Need to revise Regulation 334	The MOE should consider revising Regulation 334 in accordance with suggested changes found in Volume II. Page 124.
Recommendation 40: ***Municipal EA community/advisory liaison committees***	**Issue:** Potential role for municipal EA community advisory committees in EA process.	The MOE should request that the advisory body consider the option of creating local or regional standing EA advisory and/or liaison committees, with a role in the EA development and review process (for projects subject to Class EAs as well as for individual EAs) within delineated study areas. Page 125.
Recommendation 41: ***Incorporating master plans into EA process*** *	**Issue:** Need to review relationship between master plans and EA process.	The MOE should request the advisory body to review the relationship between infrastructure master plans (e.g., transportation) and the EA process. Page 126.

ACKNOWLEDGEMENTS

The Executive Group would like to express its sincere thanks to the many people who helped in the completion of this work. First, the Executive Group greatly appreciates the effort of the members of the three Sectoral Tables. Their effort to complete their reviews and reports, along with providing important and valuable recommendations for EA reform, were instrumental and informative.

The Executive Group would also like to express its sincere gratitude to Christopher Gore and Anne Wordsworth for their untiring efforts and stellar work in recording, deciphering and organizing the many comments and statements made by the Executive Group and Sectoral Tables to produce the interim, sectoral and final reports.

Throughout this effort, the Executive Group has also been greatly assisted by various Ministry staff. In particular, sincere appreciation goes to Blair Rohaly, Project Manager, who provided invaluable support to the Executive Group and Sectoral Tables throughout this process. Thanks also go to Ministry staff that on several occasions met with the Executive Group, attended Sectoral Table workshops, and otherwise provided important feedback, information and support. These include: Joan Andrew, Catherine Brown, Jim O'Mara, Myra Hewitt, Andj Dominski, Susan Morgan, and many other staff who provided comments and feedback. Thanks are also extended to Lois Corbett for ongoing assistance.

Lastly, much thanks to those students who volunteered their time to help with the Advisory Panel's work: Laura Burnham, Adam Fair, and Audrey Kapeleris.

CHAPTER 1: INTRODUCTION AND OUTREACH

In June 2004, the Provincial Government approved the creation of a Minister's Advisory Panel (consisting of an Executive Group and three Sectoral Tables) to provide recommendations on improving Ontario's environmental assessment (EA) program, particularly as it relates to three sectors: waste, energy and transit/transportation. The Advisory Panel was established under the authority of section 31 of the *Environmental Assessment Act* (EA Act). According to the Advisory Panel's Terms of Reference (see Progress Report, Volume II), the Advisory Panel's mission was to address the following goals:

a. **Revitalize** the EA program providing clear, prescriptive rules for appropriate environmental planning and decision-making.
b. **Rebalance** EA decision-making by setting out clear roles for all participants.
c. **Refocus** the EA process such that the level of assessment/review of proposed undertakings reflects the potential that proposals have to positively or negatively impact the environment as defined by the EA Act.

Beyond these general goals, the Minister also sought the Advisory Panel's advice on how to ensure that undertakings that provide positive contributions to Ontarians' quality of life (i.e. public transit or clean energy generation options) do not face major obstacles or delays in the existing EA program.[1] Related to this is the concern that the present EA program lacks focus on basic objectives: sustainability, predictability, clarity, fairness and consistency. To address such concerns, the Executive Group developed a "Challenge Statement" (see Volume II) to guide the Advisory Panel's deliberations regarding potential changes to Ontario's EA program.

The Executive Group's work has been predicated on the Minister's clear commitment to EA, which we share. In our view, the current debate is not whether Ontario needs a statute-based EA program; instead, the question is how Ontario's EA program can be strengthened and improved in order to reflect the above-noted goals.

To assist the Executive Group with its work, the Minister also appointed individuals to three Sectoral Tables in relation to waste, energy and transit/transportation.[2]. The three Sectoral Tables have provided feedback and specific recommendations to the Executive Group, which have been carefully considered and discussed within this Report. The Sectoral Table Reports submitted to the Executive Group are attached to this Report. The appendices from the Sectoral Table Reports, along with the appendices to this Report, are presented in a second volume.

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[1] For example, in the Ministry of Environment's April 5 2004 media release, the Ministry states that "The Ministry of the Environment will set up an advisory panel of expert practitioners to develop proposals on possible approaches to improving the EA process for waste management facilities, transit and transportation projects and clean energy facilities." Likewise, in a June 25 2004 media release, Minister Dombrowsky stated: "As part of our commitment to create clean, liveable communities, our government promised it would bring improvements to the province's environmental assessment process".

[2] Members of the Executive Group are identified in the Executive Summary of this Report. Members of the Sectoral Tables are identified in the Sectoral Panel Reports (Appendix 3). Together, the Executive Group and Sectoral Tables constitute the Advisory Panel. Advisory Panel membership reflected a range of stakeholder groups and perspectives including: the academic community; the legal community; the affected industries; urban and rural municipalities; the non-governmental environmental community; and the environmental consulting community.

EXECUTIVE GROUP PROCESS

The Executive Group convened an introductory session in July, but began its detailed work in August 2004. Since the middle of August, the Executive Group has met on a weekly and sometimes twice-weekly basis. Executive Group meetings have included regular contact with the Minister's office and Ministry of the Environment (MOE) staff, including representatives from Legal Services Branch, Strategic Policy Branch, and Environmental Assessment and Approvals Branch (EAAB).

On October 7, 2004, the Executive Group submitted a Progress Report to Minister Dombrowsky, describing the status of work to date and making initial observations on EA reform. In this Report, the Executive Group also forwarded two initial recommendations from the Transit/Transportation Table. A copy of the Progress Report is included in the second volume of this Report.

Sectoral Tables commenced their formal meetings and work at the end of September. One or two members of the Executive Group participated in Sectoral Table meetings whenever possible. Initially, the Sectoral Tables were asked to consider three central questions: 1) what concerns about EA affect your sector; 2) how can green projects or projects with the least environmental impact be facilitated through the EA process; and, 3) what policies and procedures should be created or changed to improve EA? Several other related issues followed from these questions, such as: criteria for assigning the appropriate level of assessment (e.g., thresholds and bump-ups); public participation; public versus private undertakings; timelines; and training. Sectoral Tables used these and other sector-specific issues as the basis for discussion at workshops held in early November, where various interested public and private stakeholders participated to express their views on EA reform.

The Waste Table held its workshop on Friday, November 5th, which was attended by 44 stakeholders. The Energy Table met on Monday, November 8th, with a number of stakeholders attending, and the Transit/Transportation meeting held on Wednesday, November 10th, was attended by 15 stakeholders. Issues discussed at the workshops were documented and used by Sectoral Tables to inform the content of their final reports to the Executive Group.

During this time, the Executive Group also received a number of submissions from individuals, groups, municipalities and other stakeholders in response to a notice posted on the *Environmental Bill of Rights* (EBR) Registry in order to solicit public input.

Drafts of this Report have been circulated to all members of the Sectoral Tables for review and feedback. The Executive Group wishes to assure Sectoral Table members and other participants in this review process that all of their comments and suggestions were carefully considered by the Executive Group, whether or not those comments and suggestions are specifically referenced in the body of this Report.

EXECUTIVE GROUP'S VISION FOR EA IN ONTARIO

In essence, EA is environmental planning and decision-making that is anticipatory, integrated, and iterative. As noted by Ontario's *Green Paper* that preceded the EA Act, environmental planning is aimed at identifying and evaluating environmental concerns at the earliest stages of the decision-making process:

> However, this [existing] legislation has not provided the means of ensuring that all environmental factors are considered in a comprehensive and coordinated fashion, including public input, before major projects and technological developments proceed. It is the intention of the Government to encourage the further development within its planning process, of an environmental conscience...
>
> A procedure should be developed to bring about an integrated consideration at an early stage of the entire complex of environmental effects which might be generated by a project…
>
> With these factors in mind, the Government has indicated its intention to establish a comprehensive system of assessment and evaluation of the environmental significance of activities within both the public and private sectors.[3]

In general terms, an EA program should systematically gather and evaluate information about a proposed undertaking and its alternatives so that an informed decision can be made,[4] in an open and consultative manner, as to whether the undertaking should be permitted to proceed, and whether terms and conditions are required to maximize public benefits and minimize (or avoid) adverse environmental impacts. To achieve this intent, an EA program should have a broad scope that encompasses pollution control,[5] resource management and land use planning considerations:

> Environmental assessment is unlike other environmental laws in the breadth of its procedural requirements. For example, it encompasses the control of pollutants, resource use, and approvals, as well as land-use planning laws. Environmental assessment also goes beyond discharge laws by making provision to examine more fully the effects of emissions, including social and cultural effects, and cumulative effects. In relation to land-use planning laws, EA includes consideration of zoning requirements, but also makes provision to examine alternative sites to determine a preferred location in light of

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[3] MOE, *Green Paper on Environmental Assessment* (Sept. 1973), pages 1, 5.

[4] The Espoo Convention emphasized the important role of EA "as a necessary tool to improve the quality of information presented to decision makers so that environmentally sound decisions can be made ..." Source: "Convention on Environmental Impact Assessment in a Transboundary Context" of UNECE, the United Nations Economic Commission for Europe (Espoo Finland – February 25, 1991), signed by Canada in 1991 and ratified in 1998.

[5] "Environmental assessment (EA) is one of the most important tools available for the prevention of environmental harm": source - "Access to Courts and Administrative Agencies in Transboundary Pollution Matters," *North American Environmental Law and Policy* (vol.4, 2000, NAFTA Commission for Environmental Cooperation) at p.265, section 3.2.1.

> potential advantages and disadvantages. In short, EA is intended to be a thorough process to address all fundamental environmental issues.[6]

Weighed against these benchmarks, the Executive Group has concluded that Ontario's EA Act is fundamentally sound but requires minor legislative, regulatory and administrative fine-tuning in order to more fully achieve the *Green Paper*'s objective of establishing a "comprehensive system of assessment" and to revitalize, rebalance and refocus the EA process. Therefore, the Executive Group is not calling for the wholesale re-writing of the EA Act.

Instead, the Executive Group has identified some relatively modest amendments to the EA Act (i.e. expansion of the Minister's authority to make regulations and policy guidelines) to more fully realize the Act's role as an environmental planning and decision-making regime. Since the Executive Group's recommendations do not necessitate a fundamental restructuring of the legislative framework, existing statutory stages under the EA Act (e.g. terms of reference, EA preparation, government review, and approval decisions) will remain generally intact for both individual EAs and parent Class EAs.

At the same time, however, the Executive Group has identified a significant "disconnect" between the provisions of the EA Act (especially the section 2 statement of purpose), and the actual "on the ground" delivery of Ontario's EA program. In particular, the Executive Group has concluded that there are significant policy gaps, procedural inconsistencies, and administrative shortcomings that must be addressed as soon as possible. Accordingly, the bulk of the Executive Group's recommendations involve regulatory, policy and administrative reforms that are necessary to ensure that EA program remains viable and relevant as Ontarians face the challenges and opportunities of the 21st century.

The Executive Group's suggested reforms are responsive to the Minister's request that the EA Advisory Panel develop recommendations that would 'revitalize, rebalance and refocus' Ontario's EA planning and decision-making process, while also ensuring the timely approval of undertakings which provide positive contributions to Ontarians' quality of life. However, in attempting to fulfill these goals, the Executive Group quickly realized that its recommendations would have to resolve competing considerations and dynamic tensions within Ontario's EA program.

On the one hand, there is a need for an EA program that is expeditious and efficient, and that does not unduly delay necessary undertakings. On the other hand, the EA program must be robust and consultative in nature, and should facilitate undertakings that provide environmental benefits, mitigate or avoid negative biophysical and socio-economic impacts, and support livable communities and a strong provincial economy. Accordingly, after carefully considering the Sectoral Tables' Reports (Appendices 2-4), input from MOE staff, and submissions from the public regarding EA reform, the Executive Group developed a series of key recommendations, each of which we believe strikes an appropriate balance between a "fast" EA process and a "rigorous" EA process. A key mechanism for ensuring this balance is the application of clear, consistent and transparent rules.

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[6] W. Tilleman, "Environmental Assessment", in Tilleman et al. (eds.), *Environmental Law and Policy* (3rd ed., 2003),at page 216.

It is important to note that the Executive Group's discussions and recommendations have benefited considerably from the intensive work that culminated in the Reports of the three Sectoral Tables – Waste, Energy and Transportation. Many of the recommendations from the Executive Group flow directly from, or were influenced by, the recommendations made by these Tables. In formulating the recommendations in this Report, the Executive Group has focused primarily on the broader EA issues and concentrated on the goal of reforming the overall effectiveness of the EA program and decision-making process. Consequently, the Executive Group was not able to thoroughly evaluate or include in this Report some sector-specific recommendations from the Tables that relate directly to EA processes for waste, energy and transportation projects. The Executive Group suggests that, in addition to the recommendations made in this Report, the sector-specific recommendations that have been made by the Sectoral Tables should be considered by the Minister, following further consultation.

The cornerstone of the Executive Group's vision for EA reform, and the central innovation of this Report, is the first five recommendations proposed in this Report and their link to all subsequent recommendations. These primary recommendations articulate the need for: 1) overarching general EA principles; 2) sector-specific EA policies; and, 3) sectoral EA procedures which are predicated upon the nature and extent of the anticipated benefits and negative impacts of the undertakings in each sector, and which prescribe an appropriate EA planning and decision-making process in order to evaluate the significance of those outcomes. Our proposed procedures create rules that permit the interests of all major stakeholders to be respected. Proponents get expeditious timelines and increased efficiency; members of the public get more notice and resources and thus increased effectiveness. Proponents get focus and predictability; members of the public get increased rigour. For government, the procedures represent a shift from broad discretion to clear rules. When implemented, these rules will increase and improve implementation of provincial policy. Less discretion and more rules will provide more timely decision-making and thus greater efficiency of human resources. Less discretion and more rules will also provide increased transparency. Put more colloquially, the proposed reforms deliver to government more steering and less rowing.

The Executive Group concludes that these first five interrelated recommendations form the critical foundation upon which all other EA reforms must be built.

Since Ontario's EA program began in the mid-1970s, there has existed considerable debate and controversy surrounding various legislative, regulatory and administrative issues under the EA Act. As a result of our deliberations, the Executive Group can report that this debate still exists among some proponents and EA stakeholders at the present time. Nonetheless, there appears to be strong support for the general package of recommendations being proposed by the Executive Group, as discussed below. It should be further noted that this reform package represents a carefully crafted set of integrated recommendations, rather than a "wish list" of unrelated, stand-alone suggestions that can be selectively or independently pursued.

For example, in making recommendations for sector-specific policy, the Executive Group recognizes that in order to achieve consistency across sectors and within the EA program at large (an issue still debated by some sectoral stakeholders), a set of general EA principles are needed upon which all new policy and procedural frameworks for each sector could be built. In other words, overarching EA principles should set the general direction for the development of more detailed sector-specific policies and procedural frameworks, which the Executive Group recommends should be drafted at first instance by working groups consisting of proponents, interested stakeholders, and government representatives.

However, given the public importance of the foregoing issues, the Executive Group also recommends the creation of a provincial advisory body to assist in the development of EA reforms, as well as to address other broad EA-related matters at the request of the Minister.

Recognizing the limited availability of provincial revenue to fund the provincial advisory body, the Executive Group has identified the need to introduce a system of EA fees to generate revenue that can be specifically directed to EA activities undertaken by the advisory body, EAAB, Environmental Review Tribunal (ERT), or other persons or agencies. Furthermore, while some of our recommendations will require more resources than are currently applied to EA, several other recommendations will save considerable resources and time for all participants in the process. In general, increasing the clarity of relevant policies and the transparency and predictability of the process will save the Ministry, proponents and other participants both money and time currently spent navigating an often confusing and unpredictable set of procedures under the existing EA program. In other words, the cost of doing nothing or maintaining the status quo will not only cost time and money, but will inhibit investment and preclude the many ancillary benefits associated with an improved EA process (especially for green projects).

As these and other examples illustrate, the Executive Group's recommendations are carefully tied together as an integrated reform package which should not be implemented in a piecemeal or disjointed manner.

In summary, the Executive Group has made a concerted effort to articulate and build a system of recommendations which fully achieve the important goals of the Minister, and which address the ongoing tension between different aspects of EA in Ontario. Hence, the Executive Group's vision for EA in Ontario is an environmental planning and decision-making system that is both timely and rigorous, driven by sound principles and policies, and includes consistent and predictable procedures to facilitate undertakings that contribute to the "betterment of the people of Ontario" by providing "protection, conservation and wise management of the environment" (see section 2 of the EA Act). The Executive Group believes that our recommendations, if implemented in their entirety, will help achieve this vision.

Transitional Considerations

The Executive Group's key recommendations will result in some significant changes in the content, structure and delivery of Ontario's EA program. The Executive Group also recognizes that the legislative, regulatory, policy and administrative reforms outlined in this Report will take time to properly develop and fully implement. These reforms also have resource, staffing and other institutional implications for the Ontario government, and raise issues about whether some of the changes (i.e. EA principles and sector-specific policies) can be retroactively applied to undertakings currently being processed under individual EA or Class EA requirements.

To ensure fair, orderly and timely implementation of the reforms, the Executive Group suggests that it may be necessary to phase-in the reforms in distinct stages or over reasonable timeframes. While the Executive Group believes that its recommended reforms can and should be implemented as expeditiously as possible, we also recognize that full transition to the improved EA regime cannot occur overnight.

For undertakings that are "in the mill" (i.e. proposed but not yet approved or commenced) when these reforms become operative, the general principle should be that procedural changes are immediately applicable (i.e. revised consultation requirements), while substantive changes are not (i.e. need for consistency with provincial policy). However, any undertakings proposed after the effective date of the changes should be fully subject to all new procedural and substantive reforms in place at that time.

The Executive Group suggests that there are a number of transitional tools that may be available to the Ontario government to ensure smooth and swift implementation of the recommended reforms. These tools include the following options:

- with respect to legislative amendments, it is possible to allow a reasonable period of time between Royal Assent and the actual proclamation into force;
- with respect to regulatory amendments, it is possible to quickly draft high-priority reforms (i.e. changes to O.Reg.116/01, O.Reg.206/97, or Regulation 334), but defer the effective date of such changes;[7] and
- with respect to amendments to existing instruments such as Class EAs, it is possible to pursue discrete changes forthwith (i.e. adding transit projects to the municipal Class EA), but defer other broader types of changes to when the Class EAs come up for periodic review or renewal.

The need for phased-in transition, in turn, requires accountability mechanisms to ensure that the suggested reforms are effectively and efficiently implemented. In this regard, the Executive Group anticipates that the proposed EA advisory body (see Recommendation 6) should play a key role in reviewing and assisting in the transition. We further anticipate that the Environmental Commissioner of Ontario will monitor and report upon progress in implementing EA reforms, especially since the Environmental Commissioner's annual reports have frequently identified the need for improvements to the EA program. The Executive Group also suggests that the Ontario government should establish an inter-ministerial implementation team (led by MOE) that is given specific responsibility to oversee and coordinate the implementation of the reforms set out in this report.

ORGANIZATION OF REPORT

This Report is organized into five chapters. Chapter 2 provides a brief overview of the EA program in Ontario, as well as a history of EA reform efforts. While some readers may be familiar with this material, the Executive Group felt it was important to include this overview in order to place this Report in its proper legislative and historical context. Chapter 2 ends by presenting a series of issues and questions relating to EA which have, in part, led to much of the work of the Advisory Panel.

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[7] For example, the EA Act could be amended to expressly authorize regulations in relation to EA application fees, and an appropriate fee regulation could be drafted but not take effect until the legislative amendment is proclaimed into force: see section 5 of the *Interpretation Act*.

Chapter 3 represents the most important part of this Report. Titled "Key Recommendations for Immediate Action", this chapter identifies the issues and recommendations which members of the Executive Group (and, to a large extent, the Sectoral Tables) believe are the most critical issues to be addressed in order to make fundamental improvements to EA in Ontario. More importantly, the Executive Group believes that if these recommendations are not prioritized and treated as a foundation upon which all other recommendations are based, then the fundamental improvements to EA being sought by the Minister and stakeholders *will not be achieved*.

Recommendations in Chapter 3 represent actions or measures that the Executive Group believes have general applicability to all three sectors under specific review in this Report, but also for EA in general. Hence, in many cases, the ideas and specific text from the Sectoral Table Reports were directly used in formulating individual recommendations. We make this point here in lieu of doing it for each recommendation. Chapter 3 is organized by issues framed as general topics or categories. For most issues, the subject is first briefly described, then followed by a listing of the specific recommendation(s) relating to the issue, followed by a more detailed textual discussion of the issue. The recommendations in Chapter 3 correspond to the recommendations presented in the Executive Summary.

In Chapter 4, we present recommendations which the Executive Group has identified as requiring 'further consultation or review'. These constitute issues which the Executive Group was not able to consider adequately given the time available, or which will require a good deal of further reflection and stakeholder input.

Chapter 5 concludes the Report, with subsequent appendices containing a glossary of EA terms, and copies of the core content of the Sectoral Table Reports.

In addition to this main Report, a second volume has been created. This volume contains several important additional materials, which include draft sectoral procedural charts and draft policy guidelines for each sector. The Executive Group believes these draft procedures and policies should serve as a very strong and important starting point for the work of sectoral working groups. As well, Volume II includes Sector Table responses to our Draft Final Report, submissions received from the public relating to EA review, the Executive Group's Interim Report (which also contains the Terms of Reference for the Advisory Panel), and appendices to Sector Table Reports.

CHAPTER 2: OVERVIEW OF EA AND HISTORY OF REFORM

OVERVIEW OF EA

Ontario's EA Act was enacted in 1975, and was proclaimed in force in 1976. The EA Act was widely regarded as a pioneering piece of Canadian legislation, based largely on the EA obligations set out in the United States' *National Environmental Policy Act* of 1969. Like NEPA, the focus of Ontario's EA Act has been on identifying and selecting a preferred alternative from among a range of reasonable alternatives, having regard for the environmental advantages and disadvantages of the proposed undertaking and the alternatives.[8]

Another key feature of Ontario's EA Act is the broad definition of "environment", which is generally defined as the ecological, social, cultural, economic and built environments.[9] The stated purpose of the EA Act is "the betterment of the people of Ontario" by providing for the protection, conservation and wise management of the environment. The EA Act remained largely unchanged from 1976 to 1996. However, in January 1997, a number of amendments to the EA Act came into force as a result of the passage of Bill 76 (the *Environmental Assessment and Consultation Improvement Act*). The expressed intention of Bill 76 was to make EA "less costly, more timely and more effective,"[10] although it is debatable whether these goals have been achieved to date, as described below.

At the present time, the EA Act is administered by the Minister of the Environment, who is assisted in this regard by the EAAB established under the Ministry's Operations Division.

In broad terms, the EA Act applies to "undertakings" (as defined by the Act) proposed by public sector proponents (e.g. municipalities or provincial ministries), unless such undertakings have been exempted from the Act. The EA Act does not generally apply to private sector undertakings, unless such undertakings have been specifically designated by regulation as undertakings to which the Act applies. For example, as a matter of Ministry policy, large waste disposal facilities proposed by the private sector (i.e. landfills or incinerators) have generally been designated as undertakings subject to the EA Act.

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[8] Under the U.S. NEPA, "the analysis of alternatives is the 'heart' of the impact assessment process. As noted earlier, the alternatives analysed should always include the 'no action' alternative. It has also been held ... that an agency is required to consider reasonable alternative means to the same objective even if those alternatives are outside the agency's authority – e.g. energy conservation as an alternative to building a new power plant or on-shore gas development as an alternative to offshore oil leasing." Source: p.46, section 2.2.4 of "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation). Under the *California Environmental Quality Act*, "agencies have a 'strong duty' to consider alternatives and must give reasonable substantive consideration to alternatives in light of the nature of the project. The 'no action' alternative should be examined if there are no other feasible alternatives" (p.52, section 3.1.1).

[9] This broad definition can be found in other jurisdictions as well. For example, in New York's *State Environmental Quality Review Act*, environment includes, among other things, "'existing community or neighbourhood character' and population concentration, distribution, or growth, in addition to the physical, historical and aesthetic environment." Source: p.53, section 3.2 of "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3,1 999, NAFTA Commission for Environmental Cooperation).

[10] Levy, Alan. "A Review of Environmental Assessment in Ontario", *Journal of Environmental Law and Practice*, Vol. 11, No. 2, June 2002, pp. 178.

Where an undertaking is subject to the EA Act and requires the preparation of an individual EA, the proponent is responsible for preparing technical studies, undertaking public consultation, and submitting EA documentation to the Ministry. At the present time, Ontario's individual EA process generally consists of four main steps:

- Preparation and approval of "Terms of Reference" to direct the content and conduct of the EA process for the proposed undertaking;
- Preparation and submission of the EA consisting of the studies, reports and research required by the Terms of Reference;
- Government and public review of the EA submitted by the proponent; and
- The Minister's decision on the proposed undertaking (i.e. approve, reject, or refer to mediation or a public hearing before the Environmental Review Tribunal).

It should be noted that each of the foregoing steps is to be carried out with notice and comment opportunities for First Nations, communities and stakeholders who are interested in, or affected by, the proposed undertaking.

It should be further noted that Part II of the EA Act provides statutory authority for the approval of "Class EAs", which set out streamlined planning procedures and documentary requirements for certain classes of projects (e.g., provincial roads, municipal projects, GO transit facilities, etc.). If subject to an approved parent Class EA, the proponent of a proposed project follows the prescribed planning/documentary requirements set out in the Class EA without preparing an individual EA, although the Minister has authority to issue an order "bumping up" a project to an individual EA if warranted in the circumstances.

At the present time, it appears that the vast majority of projects and activities subject to the EA Act are processed under the auspices of Class EAs rather than through individual EAs. Moreover, it appears that after the Bill 76 reforms took effect, only two individual EA matters were referred to hearings before the Environmental Review Tribunal. Virtually all other individual EA applications have been decided (and approved) by the Minister without the benefit of any public hearings.

HISTORY OF EA REFORM IN ONTARIO

Despite the strengths (and successes) of the EA Act, it has been recognized over the past two decades that there are opportunities to improve and enhance Ontario's EA program. For example, proponents and the public at large have expressed concerns about the timing, cost, inconsistency, and uncertainty within the EA process. To address these and other concerns, there have been a number of important initiatives in Ontario aimed at reforming the EA program.

In 1988, for example, the Ontario government established the Environmental Assessment Program Improvement Project (EAPIP), which was followed by the creation of an EA Task Force in 1989. This Task Force issued a 1990 discussion paper on EA reform, and the Task

Force's recommendations were subject to public consultation carried out by the Environmental Assessment Advisory Committee (EAAC). In 1991 and 1992, EAAC released two reports that called for legislative and administrative changes to Ontario's EA program.

In response, the Ontario government issued a 1993 report that adopted some – but not all – of EAAC's suggested administrative reforms, and generally deferred the EAAC proposals regarding legislative change. It should also be noted that during the early 1990s, the EA Board [now the Environmental Review Tribunal] undertook consultation and implemented changes aimed at making pre-hearing and hearing procedures more timely, effective, and efficient.

It was against this backdrop of EA reform efforts that Bill 76 was enacted by the Ontario government in 1996. Among other things, Bill 76 created the new "Terms of Reference" requirement, imposed a mandatory duty upon proponents to undertake public consultation, and entrenched Class EAs on a firm legislative basis. While these reforms enjoyed some public and proponent support, there were various concerns expressed about the high degree of Ministerial discretion (i.e. political intervention) under the EA Act, particularly in relation to EA content and public hearings. Stakeholders also expressed concern about the EA consequences of the Ontario government's decision to allow the *Intervenor Funding Project Act* to expire without renewal in 1996. While in effect, this Act had provided a legal mechanism for eligible public interest representatives to obtain funding to participate meaningfully in EA hearings.

During the past seven years after Bill 76 came into effect, it appears that many long-standing concerns about Ontario's EA program have not been addressed adequately or at all. These concerns include the following issues and questions:

- what is the overall purpose of the Ontario EA program: to simply mitigate environmental impacts or to secure environmentally sustainable benefits?
- should the nature and extent of EA requirements be dependent upon the degree of environmental risks and benefits posed by undertakings?
- should prescriptive regulations, siting standards, policy guidelines or other instruments be developed under the EA Act to direct the planning and decision-making process?
- when and how should undertakings get exempted from the EA Act?
- when and how should the EA Act apply to private sector undertakings?
- when and how should EA planning and decision-making become integrated with other land use planning or resource management regimes?
- should individual EAs delve into technical design or operational details that are traditionally addressed under other regulatory statutes?
- is it possible to shorten (or extend) timelines under the EA process without compromising environmental protection and public consultation requirements?
- how can First Nations, communities, and stakeholders access the required technical or legal expertise to participate meaningfully in the EA process?
- when is it appropriate to refer an individual EA matter to mediation or a public hearing?
- when is it appropriate to "bump-up" a Class EA project to individual EA?
- who should decide requests related to mediation, hearings, or bump-ups?

- should Class EAs be restricted to small-scale projects that recur frequently, pose relatively minor environmental impacts, and are generally amenable to well-established mitigation measures?
- what is the appropriate role and function of the Environmental Assessment and Approvals Branch?

The continued debate over these and many other key questions prompted Ontario's Environment Minister to establish the EA Advisory Panel in 2004.

CHAPTER 3: KEY RECOMMENDATIONS FOR IMMEDIATE ACTION

ISSUE: GENERAL NEED FOR PRINCIPLES, POLICIES AND PROCEDURES

In general terms, Ontario's EA program does not adequately identify, prioritize or expedite the planning or approval of "green projects" within the waste, energy or transportation sectors. While some current EA Act mechanisms (i.e. Class EA schedules) attempt to do so to a limited degree, there is room for considerable improvement in order to better facilitate "green projects" in particular, and to more effectively achieve the EA Act's purpose in general.

RECOMMENDATION 1: GENERAL NEED FOR PRINCIPLES, POLICIES AND PROCEDURES

The *Environmental Assessment Act* (EA Act) should deliver major improvements across three sectors – waste, energy, transportation – by immediately addressing three fundamental matters: (1) general EA principles within MOE policy guidelines on how to interpret and apply the purpose of the Act to specific undertakings; (2) provincial policies for each sector on what factors contribute to "green" undertakings and thereby merit priority compared to other undertakings in the sector; and (3) prescriptive sector-specific procedures which correlate EA requirements with the degree of societal benefits and environmental risks associated with an undertaking.

DISCUSSION

Given the broad purpose of the EA Act (see discussion below), the Executive Group strongly believes that the EA program should be redesigned and implemented in a manner that more effectively achieves public policy objectives. One such objective articulated by the Environment Minister and endorsed by the Executive Group involves the need to ensure that "green projects" (i.e. public transit, renewable energy, waste diversion) are not unnecessarily delayed or precluded by inappropriate EA planning and decision-making requirements.

To achieve this objective, the Executive Group has developed a series of key recommendations that are constructed upon three fundamental building blocks: (1) the development of general EA principles to provide provincial direction and guidance in EA planning and decision-making at large; (2) the development of sector-specific policies that are consistent with general EA principles, but which provide a greater level of detail on how the principles are to be implemented in each sector; and (3) the development of sector-specific procedures that clearly prescribe the nature and extent of EA requirements on the basis of the ecological and socio-economic benefits and risks associated with proposed undertakings within the sector.

Having described the conceptual basis for its key recommendations, the Executive Group provides greater detail on each of these three fundamental components in the following sections of this Report.

ISSUE: EA ACT PRINCIPLES

The EA Act states that its purpose is to achieve the "betterment" of Ontarians as well as the "protection, conservation, and wise management" of the environment. However, aside from this broad statement of purpose, the MOE has not articulated explicit EA principles to ensure that EA planning or decision-making actually achieves the purpose of the Act. The ongoing absence of overarching EA principles promotes uncertainty, undermines accountability, unduly politicizes the process, and subverts the potential effectiveness of the EA Act in securing societal benefits and environmental protection.

RECOMMENDATION 2: EA ACT PRINCIPLES

In order to ensure that all EA participants – proponents, the public and decision-makers – have a common framework to assess specific undertakings and assign preferences among alternatives, it is essential that more attention be devoted to the purpose of the EA Act. The purpose seeks the "betterment of the people" of Ontario and requires "protection, conservation and wise management in Ontario of the environment". Based on this purpose, a set of general EA principles should be articulated in EA Act policy guidelines for specific application to all decisions made under the EA Act.

DISCUSSION

General

The general principles suggested by the Executive Group are based on a desire to create an EA regime in Ontario which encourages and supports undertakings which produce social, economic and environmental benefits, while also providing a clear and understandable framework for review of undertakings that may impact the environment in a negative way. Therefore, it is important to clearly identify a set of overarching principles which can encourage or facilitate these benefits from the outset.[11] This parallels sector-specific recommendations articulating the need to have overarching provincial policy which establishes the need for specified projects or facilities within a particular sector. Having an overarching set of clear principles to guide EA planning and decision-making serves to benefit Ministry staff, proponents and other EA participants, as each will be working from the same reference point when considering and evaluating proposed undertakings and EA documentation under the EA Act. Moreover, if broadly applied under the EA Act, these general principles provide a succinct and consistent benchmark for evaluating all aspects of EA planning and decision-making in Ontario (i.e. decisions respecting approvals, exemptions, designations, bump-ups, etc.).

Perhaps more importantly, the general EA principles advocated by the Executive Group do something that has yet to be done for Ontario's EA regime: they articulate, reinforce and implement the two central goals already articulated in the EA Act's statement of purpose (i.e.

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[11] See Gibson, Robert B. "Specification of sustainability-based environmental assessment decision criteria and implications for determining 'significance' in environmental assessment". A paper prepared for the Research and Development Monograph Series, 2000. http://www.ceaa-acee.gc.ca/015/0002/0009/print-version_e.htm. Accessed, July 14, 2004.

that EA seeks to achieve both societal betterment and environmental protection). Accordingly, the Executive Group further explores in detail the EA Act's statement of purpose in this Report (see below). The Executive Group also notes that its recommended EA principles are strongly informed by Sectoral Table recommendations, as well as by current and proposed environmental commitments made by the Ontario government and already entrenched in laws, policies and guidelines under other planning or regulatory regimes (i.e. the Provincial Policy Statement issued under the *Planning Act*, the MOE Statement of Environmental Values issued under the EBR, the legislative purposes of the EBR, etc.).

In addition, the Executive Group received submissions from the public that affirmed the importance of achieving the purpose of the EA Act. For example, one commentator advised the Executive Group as follows:

> In undertaking the current review to identify improvements to Ontario's EA process, the Panel is encouraged to ensure that the original purpose of the EA process is enhanced and achieved. Recent experience indicates that proponents are focusing on how to remediate the negative impacts associated with their projects more than they are considering alternatives to their undertaking that would avoid the environmental impacts in the first place.
>
> Often, the focus of the environmental assessment process is the preparation of the environmental assessment document rather than on ensuring sound environmental planning.

With such comments in mind, the Executive Group has attempted to clarify the scope and content of the EA Act's statement of purpose, and has identified various means by which to more effectively achieve the legislative purpose.

Purpose of the EA Act

The purpose of the EA Act is stated in section 2 as follows:

> The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment.

The only term in this statement of purpose to receive definition is the "environment". The EA Act broadly defines the "environment" as follows:

> "environment" means,
> (a) air, land or water,
> (b) plant and animal life, including human life,
> (c) the social, economic and cultural conditions that influence the life of humans or a community,
> (d) any building, structure, machine or other device or thing made by humans,

(e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or

(f) any part or combination of the foregoing and the interrelationships between any two or more of them,

in or of Ontario;

Beyond this defined term, the purpose section appears to include two major goals which receive no definition, as follows:

Goal (1): "the betterment of the people of the whole or any part of Ontario";

Goal (2): "providing for the protection, conservation and wise management in Ontario of the environment".

Each of these goals merits more detailed examination, as set out below.

Goal (1) makes three fundamental claims. The first claim is that the EA Act is about *betterment* of the people (i.e. obtaining positive benefits, advantages or improvements). This claim may be contrasted with the view of some EA participants that EA is primarily about *preventing or avoiding* adverse effects. The second claim is that the EA Act is about betterment of the *people*. This claim may be contrasted with the idea that EA is primarily about the biophysical environment and not human interests. The third claim is that the EA Act is about bettering people *of the whole or any part of Ontario*. This claim makes the point that the EA Act may better the people of the whole of Ontario, and it may also better the people of any part of Ontario, but it need not better both the whole *and* the part *at the same time*. This third claim demands attention because, put simply, it suggests that the Act allows division of the people of Ontario into a whole and parts such that a decision may benefit the whole people, but harm people of a part of Ontario or, conversely, benefit people of a part of Ontario, but harm the whole. We return to this controversial trade-off below.

Goal (2) also makes three fundamental claims. The first claim is that the EA Act is about providing *protection* of the environment. In general, "protection" means preserving the status quo. This scope of this claim may be compared with the purpose of the *Environmental Protection Act* (EPA), which is about the protection of the *natural environment* (generally defined in the EPA as the air, land and water of Ontario). Thus, a key difference between these two Acts is in their respective definitions of "environment" and "natural environment". For example, returning to the EA Act definition of the "environment" set out above, the EPA definition of the "natural environment" encompasses clauses (a) and (f) only, namely "air, land or water" and their parts, combinations, and interrelationships. Thus, by comparison to the EPA, the EA Act is about protecting not merely the *physical* environment, but also the *biological* environment, the *human social* environment, and the *human built* environment, among other things.[12]

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[12] The Espoo Convention defines 'impact' to mean "any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-

The second claim in Goal (2) is that the EA Act is about providing *conservation* of the environment. This is a different claim than protection: conservation is fundamentally about *use*, such as conservation of water or energy through efficiency programs or demand management practices. Thus, typically, conservation is about *resources*: things that humans use. Further, *conservation* is about use of a resource so that the resource may continue to be used into the future. In this way, conservation appears related to the idea of sustainable use and development. The scope of the EA Act claim to conservation is important and ambitious. In contrast with another longstanding Act on the environment, the *Ontario Water Resources Act* (OWRA), which addresses a single *natural* resource only (water), the EA Act is aimed at *conserving* the full range of resources: natural, biological, built and human.

The third claim in Goal (2) is that the EA Act is about providing *wise management* of the environment. Initially, it is tempting to consider this claim superfluous as it seems difficult to conceive how there could be protection and conservation *without* wise management. However, the significance of this third claim comes from the broad definition of the environment: although, in theory, everything subject to the EA Act must be protected and conserved, there are many domains of human activity where neither of these claims affects existing *practices* and *policies*. Thus, "wise management" may be seen to be an overarching term for the environment: at a minimum, human activity must show wise management of the environment.

Additionally, beyond each of these three claims, the purpose section suggests that EA Act decisions must jointly address or satisfy all three claims, namely the protection, conservation *and* wise management of the environment.

What emerges from this detailed examination of the two goals extracted from the purpose section of the EA Act is that *neither* goal can be considered in isolation from the other. In short, one cannot consider the *betterment* goal without also considering the *protection* goal, and vice-versa. Environmental assessment provides the mechanism for achieving these goals through the broad definition of the 'environment' and consideration of alternatives.

Although the Act does not define the term "environmental assessment", it provides a starting point for what an individual EA must consist of in subsection 6.1(2), as follows:

> Subject to subsection (3), the environmental assessment must consist of:
> (a) the purpose of the undertaking;
> (b) a description of and a statement of the rationale for,
>   (i) the undertaking,
>   (ii) the alternative methods of carrying out the undertaking, and
>   (iii) the alternatives to the undertaking;
> (c) a description of,

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economic conditions resulting from alterations to those factors": source - Article 1(vii) of UNECE "Convention on Environmental Impact Assessment in a Transboundary Context" (Espoo Finland, 1991).

(i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,[13]

(ii) the effects that will be caused or that might reasonably be expected to be caused to the environment, and

(iii) the actions necessary or that might reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment,

by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking;

(d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

(e) a description of any consultation about the undertaking by the proponent and the results of the consultation.

Thus, the scheme of the EA Act seeks to ensure that an EA exists *before* there are any decisions about proceeding with a new undertaking (see also section 5 of the EA Act).[14] In this respect, the EA should be seen to be as the source of information required to make decisions consistent with the purpose of the EA Act.[15] Given the complex issues raised by the EA Act's purpose section, an individual EA is also necessarily complex: one cannot easily assess whether an undertaking has provided that all aspects of the environment are appropriately *protected, conserved* or *wisely managed.* Nor can one easily assess whether an undertaking should benefit the whole and not a part, or a part and not the whole. It would seem essential to meeting *both* goals evident in the purpose section of the Act and their interrelationship that an EA should consider an appropriate range of *alternatives* (see discussion of "alternatives" below). Neither principle is about *absolute* claims or priorities; rather, each is about *relative* claims and priorities. Thus, the role of EA is to provide the best kind of information to assess these relative claims and priorities across the full range of the "environment", as defined in the EA Act.

On the basis of the complex analysis envisaged by the EA Act in its current form, the Executive Group cautions against suggestions that the EA Act would benefit from the drafting of numerous new terms or the inclusion of more detailed definitions. Thus, the general EA principles suggested by the Executive Group in this Report are not intended to *introduce* new concepts into the EA Act; rather, they are intended to integrate concepts that already enjoy public prominence and provincial support outside the EA Act, and that are already implicit or entrenched within the dual goals of the EA Act's statement of purpose.

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[13] "Another question [under NEPA, the U.S. *National Environmental Policy Act*] is the indirect impact that the action may have. For example, the construction of a highway may lead to commercial or residential development of land near the highway. Here, too, the test is one of foreseeability and degree of connection to the proposed action." Source: "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation) at pp.45-6, section 2.2.3.

[14] Under NEPA (the U.S. *National Environmental Policy Act*), the EIS (environmental impact statement) should be commenced "as early as possible in the project planning stage": source - p.44, section 2.2.1, "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation). "The environmental impact assessment should be part of the decision about whether and how to proceed with the action, and should not become an after-the-fact rationalization for a decision already taken" (p.45).

[15] "One of the primary functions of the environmental impact assessment process under NEPA is to educate and inform the public, as well as government decision makers, about the environmental consequences of planned actions." Source: p.51, section 2.2.10, "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation).

Suggested EA principles

Consistent with the purpose of the EA Act, the Executive Group endorses the following goals, objectives and values for inclusion within the EA principles to be developed by the MOE pursuant to Recommendation 2:

Goal 1: Betterment

1) **Sustainability benefits**

The goal of EA should be to contribute to ecological and community sustainability, and to create a more desirable and durable future.[16] This includes the need to reduce gaps in resources and opportunities within communities, to ensure that everyone has enough for a decent life and that everyone is able to seek improvement in ways that do not compromise future generations' possibilities. EA should also incorporate sound economics, taking into account the full costs to society and to nature of all mitigation and impacts. EA should infuse a rational and traceable planning process into decision-making by proponents so that wise decisions are made.[17] EA is not merely for the limited purpose of avoiding or mitigating harm to human health and the environment, but for achieving societal benefits through consideration of a reasonable range of alternatives.

2) **Clear, Predictable and Timely**

The process should be clear, predictable and timely across sectors. Clarity and consistency of application of existing legislation and approvals processes is essential to effective EA. Projects with similar benefits and risks should be treated in the same way.

3) **Transparent**

The EA process should be transparent and enable proponents, reviewers and the public to understand the process and to follow projects through the various stages of government review and approvals. Among other things, this would include adequate public notice of proposed decisions and timely and full access to relevant information and sufficient resources.

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[16] According to the United Nations Environment Program (UNEP, 1987, Preliminary Notes), "'EIA' means an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development": source - section on Term of Art Definitions Contained in International Agreements (Part 1, p.12), "Transboundary Environmental Impact Assessment," *North American Environmental Law and Policy* (vol.4, 2000, NAFTA Commission for Environmental Cooperation).

[17] For example, the Espoo Convention requires that EA documentation must include, among other things, details of predictive methods, underlying assumptions, environmental data used, gaps in knowledge, and information uncertainties encountered: Appendix 2, UNECE "Convention on Environmental Impact Assessment in a Transboundary Context" (Espoo Finland, 1991).

4) Public Participation

The EA process should include opportunities and resources for participation by all potentially affected parties.[18] Meaningful public participation by all interested and affected communities, including First Nations and aboriginal communities, should be part of the EA planning and decision-making process. This would consist of: sufficient opportunities to participate in the planning of proposed projects; opportunities to come to the table to discuss, question and negotiate agreements; ability to comment upon proposed decisions; and, involvement in post-approval monitoring programs and follow-up measures. Dispute resolution processes (e.g., mediation) should be utilized throughout EA planning and decision-making processes, wherever necessary, to reduce conflicts and develop consensus.

5) One project, one integrated process

To promote the review, assessment and approval of projects through a single and appropriately staged process, an EA should be commenced early in the planning process. Further, an EA should, to the extent possible, integrate the substantive considerations of other approvals required by the undertaking so that the assessment may guide and be consistent with subsequent approvals.[19]

Goal 2: Protection

6) Precautionary Principle

Caution should be exercised in favour of the environment, and the lack of full scientific certainty should not be used as a reason to avoid or defer measures to protect, conserve or wisely manage the environment. Undertakings should not proceed where there is a threat of significant harm to the environment, even if the threat of harm cannot be definitively proven.[20]

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[18] "Environmental assessment (EA) is one of the most important tools available for the prevention of environmental harm. As such, the public consultation and public hearing components of many modern EA statutes are often seen as important parts of a strategy of public access to environmental rights and remedies." Source: "Access to Courts and Administrative Agencies in Transboundary Pollution Matters," *North American Environmental Law and Policy* (vol.4, 2000, NAFTA Commission for Environmental Cooperation) at pp.265-6. Article 6.4 of the Aarhus Convention provides for "early public participation, when all options are open and effective public participation can take place": source - UNECE "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus Denmark, 1998).

[19] The EA legislation of Mexico's various states includes coverage of a list of works and activities including "Land distribution, housing units and new urban centres": source - "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation) at p.35, section 3. Mexican legislative reform in 1996 was intended, among other things, "to simplify the EIA process for works and activities under the jurisdiction of local authorities. The reform was intended to prevent the proliferation of administrative procedures requiring several authorities to authorize projects that, in fact, could be handled in a single procedure and to further the integration of urban development with environmental management." (p.36)

[20] With respect to the issue of uncertainty under NEPA, the U.S. *National Environmental Policy Act* (e.g. does an environmental impact statement for a terminal for oil tankers "need to evaluate the consequences of a catastrophic oil spill") "agencies are still required to apply the best available evidence about reasonably foreseeable possibilities, however low the probability, along with the best available evidence about the likelihood that such an event will in

7) The Ecosystem Approach

An ecosystem approach should be applied in order to ensure the sustainability of Ontario's environment, protect human health and safety, and enable future generations to meet their needs. At a minimum, using an ecosystem approach, consideration should be given to the following factors: the direct, indirect and cumulative effects upon the environment;[21] the interdependence of air, land, water and living organisms; and the relationship between the environment and the economy.

8) Based on Good Data, Good Science and Sound Engineering

All elements of the EA process should be based upon the best information available, and upon sound scientific and engineering practices.

9) Environmental Protection

Facilities, projects, activities, programs or plans[22] approved under the EA Act should, where applicable:

a) prevent, reduce or eliminate the creation, use or release of substances that contaminate, or are likely to contaminate, the environment;
b) protect and conserve biological, ecological and genetic diversity, including sensitive or significant species, areas or processes;
c) reduce overall energy, water, and other material demands upon Ontario's renewable and non-renewable resource base; and,
d) identify and pursue opportunities to restore or rehabilitate degraded environments wherever feasible.

These priorities are best achieved through consideration of alternatives.

10) Avoidance First

Undertakings subject to the EA Act should be directed away from:

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fact occur": source - "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation) at p.46, section 2.2.3.

[21] With respect to the issue of cumulative effects under NEPA (the U.S. *National Environmental Policy Act*), if "other actions [which may precede or follow the proposed action] are reasonably connected to the proposed action, or are reasonably foreseeable, their potential impacts should be included": source - "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation) at p.45, section 2.2.3.

[22] In addition to projects, New York's *State Environmental Quality Review Act* also "applies to agency decisions on policies, regulations or procedures": source - "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3,1 999, NAFTA Commission for Environmental Cooperation) at p.53, section 3.2. Under NEPA (U.S. *National Environmental Policy Act*), in some instances "agencies have prepared 'programmatic' EISs discussing the general scope and effect of a nationwide government program, with separate environmental assessments or EISs done for specific projects or actions under that program." (p.45, section 2.2.1).

a) critical habitat of endangered and threatened species;
b) provincially and regionally significant wetlands, valleylands, woodlands, or wildlife habitat;
c) provincially and regionally significant areas of natural and scientific interest;
d) prime agricultural lands or specialty crop areas;
e) significant areas of cultural heritage or archeological value;
f) lands subject to flooding or erosion hazards; or
g) significant or sensitive groundwater or surface water features.

This is achieved by a consideration of alternatives.

ISSUE: SECTOR-SPECIFIC POLICY

Consistent among the Sectoral Tables was the identified need for the Ontario government to develop sector-specific policy to help guide the EA planning and decision-making process for each sector. For example, the Report of the Waste Table suggests that a provincial waste policy be developed that clearly articulates the provincial need for, and the interrelationship among, all elements of waste management in Ontario. This would include a statement of goals, measurable targets and timelines, as well as a quantitative evaluation of collection, transfer, reuse and recycling, other forms of waste diversion and all forms of disposal. Likewise, Recommendation 2 of the Energy Table's Report suggests that the Ontario Government should provide clear policy guidance in a number of areas to promote a focused and consistent energy system, to avoid duplication and inefficient use of proponent and stakeholder resources, and to facilitate approvals for energy projects. Similarly, many of the recommendations of the Transportation Table speak directly to the need for improved provincial policy direction. In summary, all three sectors strongly argued that the absence of, and lack of clarity in, provincial policy and sectoral priorities have caused significant delays and confusion for proponents and other EA participants.

Submissions received by the Executive Group from members of the public also supported the need to develop clear provincial policy. For example, an environmental consultant working within the waste sector noted that "an integrated waste management policy is essential for a coherent, responsible and equitable system of managing waste". Similarly, a non-governmental organization recommended the development of "provincial guidelines which set out provincial priorities, like Provincial Policy Statements under the *Planning Act*, established by the appropriate provincial ministries with which proponents must comply when planning and/or carrying out undertakings". According to this submission, these provincial guidelines should form part of the proponents' Terms of Reference (TOR).

The nature, scope and effect of sector-specific EA policy at the provincial level was the subject of considerable discussion between the Executive Group and the Waste, Energy and Transportation Tables. The Executive Group also drafted illustrative examples of what these provincial policies might look like for each of the three sectors, and provided copies of these draft policies to the Sectoral Tables for review and comment.

Unfortunately, given the deadline for the submission of this Report, the Executive Group had insufficient time to finalize these policies and submit them to the Minister for her consideration. The Executive Group was also concerned that its membership lacked the technical or scientific expertise required to inform the content of sector-specific policies, particularly in the energy context. Similarly, it was recognized that sector-specific policies should be reflective of a broader range of public and private interests and perspectives that were not fully represented on the Executive Group or the Sectoral Tables (e.g. provincial ministries, naturalist groups, public health organizations, agricultural associations, First Nations and aboriginal communities, etc.).

Accordingly, the Executive Group recommends that the Minister should immediately appoint small, balanced and representative sectoral working groups to develop the actual content of the sector-specific policies envisioned by this Report. While some observers might criticize this deferral of detailed policy development to another round of public consultation, the Executive Group concludes that this deferral is inevitable in light of the constraints noted above.

We further note that in other environmental reform initiatives, it has not been unusual for the initial round of consultation to centre on fundamental issues, or new policy direction, at a general level of analysis, which is then followed by subsequent rounds of more focused consultation on implementation matters and related details. For example, following extensive public consultation across Ontario, the Part 2 Report of the Walkerton Inquiry made a number of general recommendations regarding the need to develop an effective source water protection regime in the province. Although these recommendations were immediately adopted by the Ontario government, there were further rounds of successively more detailed public consultation to work out the legislative, regulatory and administrative details.[23]

Given these and other examples, the Executive Group suggests that the drafting of sectoral policies during the next round of consultation is neither unprecedented nor inappropriate. To the contrary, the Executive Group believes that sector-specific EA policies play a crucial role in the overall reform package outlined in this Report. Therefore, the content of sector-specific policies should be systematically developed in an open and consultative manner by the persons or groups most interested in, or affected by, the matters to be addressed in such policies.

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[23] For example, the Part 2 Walkerton Report was followed by the Report of the multi-stakeholder Source Protection Advisory Committee (2003), the release of a government White Paper and draft legislation, and, most recently, the reports of the province's Implementation Committee and Technical Experts Committee (2004). A similar multi-stage process was used to develop Ontario's EBR (e.g. the multi-stakeholder EBR Advisory Committee (1990) dealt with general principles, while the EBR Task Force (1992) worked out implementation details).

RECOMMENDATION 3: SECTOR-SPECIFIC POLICY

The Government of Ontario should develop sector-specific policies which must be followed under the EA Act, just as the Provincial Policy Statement is issued and applied under the *Planning Act*. These sectoral policies should include a hierarchy of preferences based on degree of benefit and risk of impact (e.g. policy preference for renewable energy, public transit, and waste diversion). As an immediate measure the Province should ensure that EA decisions are consistent with PPS provisions respecting renewable energy systems, transit, and waste reduction, reuse and recycling.

RECOMMENDATION 4: ESTABLISHMENT OF SECTOR WORKING GROUPS

The MOE should immediately establish small sectoral working groups for Energy, Transportation and Waste sectors. Members should be experienced in EA to expeditiously develop each sectoral policy, which can be forwarded to the Minister for review and adoption under the EA Act.

DISCUSSION:

In the absence of sector-specific policies under the EA Act, Terms of Reference become a vehicle for proposing specific approaches for particular undertakings, particularly in the individual EA context.[24] Not only do the negotiations that follow cause delays, but they can also limit access by other participants to this process. In addition, the project-specific approach results in considerable inconsistencies in scope and procedures both among and within sectors. While draft guidelines for Terms of Reference have been under development by MOE for years, they have not been finalized nor formally released to date.

The Executive Group further notes that there is a limited opportunity for the Minister to reference government policy in "policy guidelines" (see section 27.1 of the EA Act), but this authority has never been used to date. Even if the Minister issued appropriate policy guidelines, the current wording of section 27.1 suggests that such guidelines are only relevant to the ERT, rather than other decision-makers in the EA process. Indeed, such policy guidelines would not even be binding on the ERT since section 27.1 merely states that the ERT "shall consider" policy guidelines issued by the Minister. This language is analogous to the much-maligned "have regard for" provision under the *Planning Act*, which the Ontario government has recently committed to changing to the more rigorous "shall be consistent with" standard to ensure that all planning authorities (not just the Ontario Municipal Board) make decisions that are consistent with the Provincial Policy Statement. Therefore, in order to facilitate the development and effective implementation of sector-specific policies (and the above-noted EA principles) under the EA Act, it will be necessary to amend section 27.1 accordingly.

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[24] In the Nova Scotia EA regime, unlike Ontario, the EA Administrator (a provincial agency) prepares the TOR, not the proponent, and consults widely in so doing (source: MOE Environmental Assessment & Approvals Branch).

In any event, given the current absence of any MOE policy guidelines under the EA Act, it appears that governmental policy in relevant areas is not properly integrated into the EA process, except perhaps indirectly, during the government review of terms of reference or EAs. In the view of the Executive Group, clear statements of government sectoral policies under the EA Act would significantly clarify for proponents and EA participants what benefits are currently most valued, and what prohibitions should be respected during the process. At the same time, the promulgation of provincial sectoral policy (with quantified assessments of the "need" for specified facilities or projects) should significantly ease the description of "need" and "alternatives to" within EAs prepared for projects within such sectors, as described below.

For example, more stringent EA requirements regarding "need" and alternatives might be required (i.e. by sectoral regulation) for a non-renewable energy plant than for a renewable energy project, provided that the sectoral policy articulates a clear provincial preference for renewable energy. Similarly, siting standards premised upon sectoral policy could be set out in regulation to assist in identifying project locations that should not be developed. Such regulations could also specify provincial design and operational standards to ensure proper construction and use of facilities at locations that meet prescribed siting standards. The Executive Group recognizes that this sectoral approach may not completely eliminate siting controversies, but appropriate and well-drafted sectoral policies and implementing regulations (both of which should be developed with meaningful stakeholder input) should go a long way in minimizing conflict and confrontation, particularly where provincial policy clearly delineates "green projects" that should be preferred over more risky or controversial undertakings. In addition, sectoral policy could specify the nature or extent of local community support that must be satisfactorily demonstrated by the proponent prior to EA submission (see discussion of "willing host communities" below).

While the task of creating and implementing sectoral policies is challenging, it is the Executive Group's belief, which is buttressed by the findings and recommendations of the Sectoral Tables, that implementing other recommendations for EA reform in the absence of overarching policy guidance is tantamount to building a shelter without a roof – regardless of the strength of the walls or foundation of the structure, the inherent unpredictability of the weather will always influence one's willingness or ability to plan future activities. Likewise, in the absence of sector-specific policy under the EA Act, there is considerable unpredictability and uncertainty, which significantly affects the willingness or ability of proponents to initiate or complete the EA planning and decision-making process, even for "green projects".

The Executive Group recognizes that the development of sector-specific policies would require staff time and resources which may not be readily available within the MOE at the present time. Consequently, the Executive Group suggests that these policies should be drafted by small, representative working groups in each sector. Once appointed by MOE, these *ad hoc* working groups can start by examining the existing policy framework, inviting comments from the public and affected parties, and preparing clear, concise and consensus-based sectoral policies, which can be forwarded to the Minister for review and adoption as policy guidelines under the EA Act.

These working groups would be advisory in nature, and should have balanced representation from involved parties and affected interests (including MOE representatives). In addition, the working groups should be given Ministerial direction to complete their policy drafting exercise within 6 months of being appointed. If consensus is not achieved within this timeframe, then the matter should be referred to the provincial advisory body for review and completion (see discussion immediately below). Once the sectoral policy development is complete, the advisory body would submit the proposed policy to the Minister for review and adoption under the Act. In either case, the Minister still retains ultimate approval authority over the sectoral policies, but the actual content of the policies could be developed expeditiously and effectively by engaging outside resources and expertise.

ISSUE: EA PROCEDURES

Ontario's current EA program is characterized by uncertainty, unpredictability and inconsistency as to the nature and extent of procedural requirements that may be applicable to undertakings (or classes of undertakings) subject to the EA Act. For individual EAs, procedural requirements are frequently determined on a case-by-case basis in the approved Terms of Reference, but the MOE has not finalized any overarching guidance in terms of what constitutes acceptable TOR content or EA planning methodology, and sometimes undertakings within the same sector (e.g. waste) receive differing EA treatment (i.e. some landfills are subject to full EAs while others are subject to scoped EAs). In addition, it is uncertain whether a proposed undertaking may ultimately get referred, in whole or in part, to the Environmental Review Tribunal for a public hearing. Similar concerns exist in the Class EA context and the O.Reg. 116/01 regimes, where it is uncertain whether a particular project may get bumped up or elevated to an individual EA. This has led some proponents and EA participants to complain that the EA process has become politicized rather than predictable in terms of procedural requirements.

Similarly, in general terms, the application of the EA Act often depends on whether the particular undertaking is being proposed by a public proponent (e.g. a municipality or provincial Ministry) or a private proponent (e.g. a limited company or corporation). Public proponents are generally subject to the Act unless they (or their undertakings) have been exempted by regulation (e.g. Regulation 334) or by declaration order (e.g. section 3.2 of the EA Act). Conversely, private proponents are generally not subject to the Act unless their undertaking is designated, by regulation or agreement, as an undertaking to which the Act applies: see section 3 of the EA Act.[25]

This general distinction between public and private proponents has implications for the content of EA requirements under the Act. For example, it remains unclear (and controversial) whether – and to what extent – public and private proponents should be required to fully address the threshold issues of "need" and alternatives in relation to certain undertakings subject to the EA Act. As a submission received from a member of the public to the Executive Group correctly noted, "there is no guidance in [the EA Act] around how proponents should demonstrate need/justification for a project", and "there is no guidance in [the EA Act] in identifying **reasonable** alternatives to the undertaking" (original emphasis).

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[25] There is no similar public/private distinction in the EA regimes of other jurisdictions such as British Columbia, Quebec, Minnesota and Mexico: sources - MOE Environmental Assessment & Approvals Branch, and "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation) at pp.27 and 35. Under the *California Environmental Quality Act* "most private development projects involving construction or other physical alteration of the environment will require the approval of one or more state or local agencies, so most private projects are covered" (p.52, section 3.1). Like CEAA, the California legislation is triggered if a permit, licence, certificate, etc. is required or if State financial support is provided. The same holds true under New York's *State Environmental Quality Review Act* (p.53, section 3.2).

This uncertainty is particularly acute in relation to "green" projects whose benefits appear self-evident and clearly in the public interest (e.g. transit, waste diversion, renewable energy sources, etc.). In such cases, it has been suggested that it is inefficient and pointless to require proponents to justify such projects by formally proving there is a public "need" for the undertakings in question.

Similar concerns have been expressed about the efficacy of requiring proponents to consider alternatives that may be beyond their corporate mandate, business objectives, economic capability, or legal powers to implement. Such concerns may apply to both private proponents and public proponents.

Nevertheless, the demonstrations of "need" for an undertaking, and the consideration of alternatives (especially "alternatives to"), are arguably the most important environmental planning considerations under the EA Act. Indeed, the content requirements for an EA under the Act imply that before an environmentally significant undertaking proceeds, the EA planning and decision-making process should, among other things, require:

- a demonstration that the undertaking is actually necessary;
- an evaluation of a reasonable range of alternatives and options; and
- a comparison of the environmental benefits and risks of the undertaking and its alternatives.

Ideally, pursuing these matters in a traceable, rational and public process will ultimately lead to the identification of an environmentally preferable undertaking to address the problem or opportunity described by the proponent. Indeed, as noted above in this Report, the stated purpose of the EA Act (section 2) implies that only those undertakings that result in the "betterment" of Ontarians (i.e. by providing biophysical and socio-economic benefits) should be permitted to proceed under the EA Act.

Therefore, to enhance the fairness and effectiveness of the EA program, it is necessary to ensure that the EA Act applies to environmentally significant undertakings, regardless of whether the proponent is a public or private sector entity. At the same time, the nature and extent of EA requirements should correspond to the relative benefits or risks associated with such undertakings. It is also necessary to address the EA Act's lack of clarity and consistency regarding the consideration of "need" and alternatives within the EA planning and decision-making process, in both the individual and Class EA context. The Executive Group concludes that a clearer set of sector-specific procedures would help address these concerns.

RECOMMENDATION 5: EA PROCEDURES

a) A procedural framework should be developed such that the nature and extent of EA documentation, notification, and planning depend on the environmental benefits and risks associated with a particular undertaking. Undertakings that pose benefits without corresponding risks should be given priority under the EA Act in the sense that their process and approval standards are easier to meet than undertakings that create risks and produce few or no benefits. For each sector, existing Class EA and regulatory instruments should be adapted accordingly.

b) Guided by the procedural charts in Chapter 3 and the principle that sector rules should be consistent across sectors, the Minister should ask the proposed working groups to recommend binding rules for EA triggers and processes for each sector. Thus, the procedural charts should be adopted as a future regulation, as amended by working group recommendations that treat similar projects within all sectors consistently. In particular, as suggested by the Waste Sector Table, the waste sector working group should consider the following issues:

   i. designate certain waste management facilities (e.g. all landfills and incinerators accepting municipal and IC&I waste) as being subject to the EA Act, regardless of proponency;
   ii. exempt certain facility-related proposals from EA obligations (e.g. Category 1 projects);
   iii. establish an appropriate EA process for small-scale or less environmentally significant projects within prescribed thresholds or categories;
   iv. ensure that individual EAs are conducted for large-scale or environmentally significant waste management undertakings;
   v. provide prescriptive details on undertakings that require the highest level of assessment(e.g., TOR content or category 5 projects); and,
   vi. compile and update a comprehensive provincial database on waste management.

c) Pending the completion of the revised sectoral procedures, as an interim measure the MOE should immediately revise the draft TOR guideline to ensure consistency with this Report (especially in relation to "need" and alternatives to"), and should post the revised TOR guideline on the EBR Registry for public review and comment prior to finalization.

DISCUSSION:

Background: Current EA Coverage and Content Requirements

The environmental risks (or benefits) posed by a proposed undertaking are not necessarily dependent upon whether the proponent is a public or private entity, or whether the lands in question are in public or private ownership. Similarly, the size, scale or cost of a proposed undertaking may not necessarily be indicative of the environmental significance of the undertaking. For example, a relatively small or inexpensive undertaking (with fewer mitigation measures) may create significant adverse effects if sited within a sensitive environment (i.e. local municipal road through a provincially significant wetland), while a larger or more costly undertaking may pose relatively fewer risks if sited in a suitable location (i.e. regional road through an urbanized area).

Accordingly, many EA stakeholders have suggested that it is time to reconsider the EA Act's current differential treatment between private and public proponents, and to revisit the current thresholds or "triggers" that are used to determine whether a particular undertaking is subject to (or exempted from) the EA Act. For example, the attached Report of the Transportation Table has identified the need to "establish EA practice guidelines which require proponents to meaningfully consider all reasonable alternative solutions, irrespective of their agency/business mandates" (Recommendation 4.1). Similarly, the attached Report of the Waste Table criticizes the "piecemeal" criteria used to decide which waste facilities are subject to the EA Act, and recommends the passage of a sectoral regulation governing TOR content so that EAs, "whether they are public or private, should be subject to similar levels of scrutiny" (pages 8 to 10). A somewhat similar comment was received by the Executive Group from a municipality which recommended that "the EA planning process with respect to expanding or siting a new landfill must be articulated clearly with guidelines that are both practical and environmentally sound."

EA stakeholders have also expressed concern about the lack of an environmental rationale for the wholesale exemption of municipal undertakings (i.e. building construction, parkland development, etc.) whose estimated cost is less than $3.5 million: see section 5(2) of Regulation 334. Concerns have also been raised over the fact that the regulatory definition of "estimated cost" excludes costs for land acquisition, feasibility studies, facility operation, buildings and ancillary equipment or machinery. Moreover, the blanket exemption for any municipal project worth less than $3.5 million may encourage piecemeal planning and construction by municipal authorities.[26] On the other hand, the Transportation Table has recommended the wholesale exemption of any smaller projects costing less than $250,000 (Recommendation 13). At the same time, the Transportation Table suggests that the $3.5 million exemption limit be increased to $10 million for municipal transit projects (Recommendation 1.3). The Executive Group does not take a position on how the $3.5 million limit should be adjusted, but notes that this fiscal exemption has attracted considerable criticism and clearly requires further review and/or revision, as discussed below.

For some sectors, the MOE has attempted to make the application of the EA Act more equitable, predictable and responsive to the degree of environmental risks (or benefits) posed by an undertaking or a class of undertakings. This approach is heavily reliant upon prescribed thresholds or "triggers" that indicate whether – or to what extent – proponents must address EA requirements. As described below, these thresholds have generally been expressed in quantitative terms (i.e. number of mega-watts ("MW"[27]) produced by the facility, number of persons served by the undertaking, volume of waste received or processed, etc.), although triggers can also be expressed in qualitative terms (i.e. "minor" or "major" improvements, potential for "significant" environmental effects, etc.). However, it has become increasingly apparent to many Ontario stakeholders that a number of these existing EA thresholds are subjective, impractical, or in serious need of revision.

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[26] Piece-mealing has been addressed under NEPA (U.S. *National Environmental Policy Act*):
"Another issues that often arises in this context is 'segmentation' - whether the proposed action stands alone or is part of a larger plan that should be evaluated for its overall effect. If there is sufficient connection between the activity described in the EIS [environmental impact statement] and other planned activities, the EIS should evaluate the environmental effects of the total project concept. If, however, the project segment under review is viable as an independent project, and if related projects are not reasonably foreseeable, an EIS on the segment alone is usually adequate." Source: "Environmental Impact Assessment - Law and Practice in North America," *North American Environmental Law and Policy* (vol.3, 1999, NAFTA Commission for Environmental Cooperation) at p.46, section 2.2.3.

[27] One MW of generation can produce enough electrical energy to supply the power needs of about 500 homes per year.

Example 1: Current EA Thresholds for Electricity Projects

Traditionally, EA requirements in the energy sector applied only to Ontario Hydro, its successors, and other public bodies and such requirements were largely implemented through Class EA mechanisms. Private sector energy facilities were generally not subject to EA requirements unless they were specifically designated as undertakings to which the Act applied.

In the late 1990s, the Ontario government announced its intention to open up the electricity market to competition while protecting the environment and providing a level playing field for proponents. Among other things, this new policy direction required changes to EA requirements for electricity projects, which were implemented in the Electricity Projects Regulation (O.Reg.116/01), which was promulgated in 2001.

As a result of these changes, the EA Act now generally applies to both public and private electricity projects caught by O.Reg. 116/01, which essentially identifies three classes of project categories (A, B and C) and prescribes varying levels of assessment, consultation and documentation requirements (i.e. ranging from no EA to an "environmental screening process" or an individual EA). Details about the implementation of the O.Reg.116/01 regime are found in the MOE's "Guide to EA Requirements for Electricity Projects" (March 2001).

Projects under Category A are considered to be "clean" energy facilities that have relatively minimal environmental effects, and such projects are effectively exempted from the EA Act and do not trigger any EA requirements. These projects include wind turbines producing less than 2 MW, natural gas-fired generating stations producing less than 5 MW, and natural gas cogeneration or landfill gas/biogas facilities producing less than 25 MW. Despite being exempted from the EA Act, Category A projects must still comply with other applicable statutory requirements, and if Crown lands or resources are required to carry out the project, then environmental reviews may be necessary under other EA instruments (i.e. ORC Realty Activities Class EA, MNR Resource Stewardship & Facility Class EA, etc.). It should be further noted that the Minister has the residual power to designate a particularly significant Category A project as an undertaking requiring an individual EA.

Projects under Category B are considered to have potential environmental effects that can likely be mitigated, and such projects do not trigger individual EA requirements on the condition that proponents of Category B projects successfully complete an "environmental screening process". Category B projects include wind turbines producing more than 2 MW, natural gas-fired generating stations producing more than 5 MW, and hydro-electric generating stations producing less than 200 MW. The Category B screening process is, in essence, a proponent-driven self-assessment process that requires consultation with agencies and the public, and requires preparation of prescribed notices, reports and statements of completion. There is also a public opportunity to request that a particular project be "elevated" (i.e. bumped up) to an individual

EA. Elevation requests are decided at first instance by the EAAB Director, with the right to appeal the Director's decision to the Minister. To date, it appears that few, if any, elevation requests have been granted.

Projects under Category C are considered to be major projects with known significant environmental effects, and proponents of Category C projects are required to prepare individual EAs in accordance with Part II of the EA Act. These projects include hydroelectric generating stations producing more than 200 MW, and 500 kilovolt ("kV") transmission lines longer than 2 kilometres.

The project categorization/screening process under O.Reg.116/01 has been in force for approximately three years, and over a dozen Category B projects (with a total of 2,400 MW) have completed the environmental screening process. However, there has been ongoing debate about whether the current thresholds between the project categories are appropriate, especially in relation to "clean" energy projects. In 2003, for example, the MOE undertook public consultation on possible revisions to the O.Reg.116/01 regime, and proposed to increase the Category A threshold for certain "clean" electricity projects to 100 MW.[28] In addition, the MOE solicited public input on how new and emerging technologies (i.e. synthetic gas) should be treated under O.Reg.116/01. These public discussions have become increasingly important in light of the Ontario government's commitment to phase out all coal-fired generating stations by 2007, and to increase electrical production from renewable and clean energy sources. To date, however, no corresponding amendments have been made to the O.Reg. 116/01 regime.

It should be further noted that the attached Report of the Energy Table includes a recommendation that the province provide "clear instruction and guidance on definition of projects/bundles to be subject to the EA process" (page 10). The Energy Table has also recommended several "interim" revisions to O.Reg. 116/01 and the Guide (pages 17 to 24). Due to time constraints and the technical nature of certain suggestions, the Executive Group has been unable to fully evaluate these proposed changes to the Regulation and Guide, and therefore we are forwarding these recommendations to the Minister for her consideration.

Example 2: Current EA Thresholds for Waste Management

"Waste management" generally refers to a diverse range of waste-related activities and facilities, including waste collection, transportation, storage, transfer, processing and final disposal. In Ontario, private and public proponents typically carry out waste management.

In addition, this sector involves different waste streams (i.e. municipal waste, industrial, commercial and institutional, hazardous and liquid industrial wastes, etc.) and different types of facilities (i.e. waste processing sites, transfer stations, landfills, incinerators, etc.), all of which may pose varying degrees of environmental risks or benefits at the local, regional or provincial level. Waste management systems and waste disposal sites require certificates of approval under Part V of the EPA, but EA requirements may – or may not – be required, depending on the nature of the facility and its proponent.

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[28] See EBR Registry No. RA03E0020 (July 3, 2003).

In general terms, EA requirements are currently applied to private and public waste management proponents through a complex mix of law, regulation and policy. For example, Regulation 334 wholly exempts certain types of municipal transfer stations and organic soil conditioning sites from the EA Act. Regulation 334 further provides, in effect, that municipal landfills are subject to the EA Act if section 30 of the EPA is applicable to such proposals. Section 30 of the EPA is applicable where a landfill, regardless of its physical size, design or location, will be receiving the waste equivalent to the domestic waste generated by 1,500 persons. The origin of, and environmental rationale for, this numerical trigger is unclear, and it has prompted considerable debate among waste management stakeholders, as described below.

As a matter of Ministerial policy developed in late 1980s, private landfill sites are subject to the EA Act if such proposals involve a total of 40,000 m^3 (or greater) of municipal waste. In practice, it requires either a project-specific designating regulation, or a voluntary agreement with the proponent, in order to apply EA requirements to private landfills. Again, however, it is unclear how or why this particular waste volume was deemed to be significant enough to warrant the application of the EA Act and the preparation of an individual EA.

The MOE has also developed quantitative policy triggers for applying the EA Act to other types of waste management facilities. For example, incinerators disposing of more than 100 tonnes/day of municipal waste, processing facilities producing more than 200 tonnes/day of residual municipal waste, and transfer stations handling more than 300 tonnes/day of municipal waste, will be subject to EA requirements as a matter of MOE policy. On the other hand, MOE policy indicates that landfills or incinerators disposing of hazardous or hauled liquid industrial waste will be subject to EA requirements, regardless of waste quantity.

In summary, under current MOE regulation and policy, municipal waste management facilities over certain thresholds (i.e. municipal landfill serving greater than 1,500 persons; private landfill receiving more than 40,000 m^3; an incinerator receiving more than 100 tonnes/day) must conduct an individual EA and obtain approval to proceed under the EA Act. No Class EA for municipal waste has been developed to date, largely because of disagreement whether waste disposal projects have appropriate characteristics (i.e. similar, small-scale, recur frequently, known impacts, mitigable effects, etc.) for inclusion within a Class EA. There has also been uncertainty over which entity or organization could properly serve as the "proponent" for the purposes of developing such a Class EA.

In any event, there is increasing concern among waste management stakeholders that the simplistic quantitative triggers used by the MOE are outdated, inflexible, and require revision in light of current waste management trends (i.e. bigger centralized facilities, larger service areas, municipalities contracting out waste management services, etc.). For example, the members of the Waste Table have recommended that the EA Act (and the EPA) "be applied to projects in such a way that projects ranging from those with the least likely impact (such as small transfer stations) to those projects with the greatest possible impact (such as landfills and thermal treatment) are subject to the appropriate level of assessment and review" (Recommendation 3). These and other stakeholders correctly contend that the amount of waste received (or the number of persons served) may not necessarily be the best indicator of the likelihood or significance of environmental effects associated with a particular facility. In addition, the MOE's reliance upon quantitative triggers for applying EA requirements has caused some proponents to propose facilities just under the threshold (i.e. a 299 tonne/day transfer station), then seek incremental expansions thereafter. Such piecemeal planning is inconsistent with the principles of sound EA planning, and should no longer be countenanced. To delineate suggested thresholds for applying the EA Act to waste management facilities, the Waste Table has appended a chart to its Report (see Volume II). The Executive Group does not endorse the draft thresholds articulated by the Waste Table for discussion purposes, but we fully agree with the Waste Table that there is a pressing need to immediately review and revise the current thresholds or triggers found in existing MOE policy and criteria.

Under the current EA program, it is also unclear how new and emerging waste technologies will be addressed under existing MOE criteria for applying EA requirements to the waste management sector. Indeed, because such criteria are largely entrenched in non-enforceable policy, there is considerable uncertainty whether they will actually result in the application of EA requirements to a particular undertaking. This gives rise to an additional concern that limited EAAB resources are being unnecessarily consumed by case-by-case reviews of whether a particular waste management project should be subject to EA requirements.

Accordingly, some waste management stakeholders have advocated the development of a waste management sectoral regulation under the EA Act that: (a) provides that all private and public waste management facilities are designated as being subject to the Act; (b) prescribes different classes or categories of waste management facilities (i.e. diversion projects, transfer/processing facilities, landfills, incinerators, etc.); and (c) imposes varying levels of EA requirements that reflect the significance of the environmental effects (or benefits) associated with the different facility categories (i.e. no EA requirements for prescribed diversion projects, environmental screening for prescribed transfer/processing facilities, and individual EA for new or expanded landfills and incinerators). If such a regulation were promulgated, then the current uncertainty and inequity in the EA process would be substantially reduced because similar waste projects would receive the same treatment under the EA Act, regardless of proponency.

It should be noted that the Waste Table strongly recommended the development of a sectoral regulation, based on provincial policy that describes how private and public proponents should address "rationale", "alternatives to" and "alternative methods" (see Waste Management Panel Recommendation 4). Conceptually, the Executive Group supports the development of such a regulation, but notes that the regulatory details must be developed in an open and consultative process prior to implementation (see Recommendation 5).

Additional support for greater consistency in EA requirements for private and public proponents in the waste sector was evident in the public submissions received by the Executive Group. For example, an environmental consultant wrote as follows:

> If waste management is considered a public utility and the private sector wants to be a partner in this public utility, then it should be required to adhere to public policy. The TOR must establish the proponent's need based on public policy, and alternative methods must include achieving the province's waste diversion goals and objectives, the same as those for the public sector.

Example 3: EA Thresholds for Transit/Transportation Projects

Transit/transportation projects can be planned and implemented on local, regional and provincial scales, and include various forms of infrastructure such as new highways, road widenings, rail corridors, subway or light rail transit, and bus ways or transit ways. Generally, the proponents of transit/transportation projects are public bodies, such as municipalities, Ministry of Transportation ("MTO"), GO Transit and other transit authorities (i.e. TTC and OC Transpo).

EA requirements are applied to transit/transportation projects either through individual EAs or approved Class EAs. For example, the MTO Class EA specifies that Group A projects (i.e. new provincial highways, transitways, and ferryboat connections) will require an individual EA. Similarly, this Class EA categorizes improvements to existing provincial transportation facilities as Group B or C projects, and prescribes varying levels of assessment, consultation, and documentation, depending on whether the improvement is "major" or "minor". Group D projects (i.e. facility operation, routine maintenance, etc.) do not trigger any consultation or documentation requirements.

A similar classification scheme is contained within the Municipal Engineers Association ("MEA") parent Class EA, which delineates three categories of projects (i.e. Schedules A, B and C), and prescribes assessment, consultation and documentation requirements for each category. Schedule A projects are municipal maintenance and operational activities that are small-scale and pose minimal adverse environmental effects, and therefore trigger no documentation requirements. Schedule B projects include improvements and minor expansions to existing municipal facilities that have some potential for adverse environmental effects, and therefore trigger a screening assessment, mandatory consultation, and screening documentation. Schedule C projects include construction of new facilities and major expansions of existing facilities that have potential for significant environmental effects, and therefore require more detailed analysis, evaluation of alternatives, mandatory consultation, and preparation of an Environmental Study Report (ESR).

The GO Transit Class EA describes similar categories of projects (i.e. Groups A, B and C), and prescribes varying levels of assessment, consultation and documentation. Group A projects are routine or operational projects with minimal or no environmental effects, and therefore trigger no consultation or documentation requirements. Group B projects include construction and operation of commuter rail stations, rail routes, bus terminals and storage/maintenance facilities with some potential for environmental effects, and therefore require mandatory consultation and preparation of an ESR. Group C projects include construction of new rail lines and large-scale route extensions with potential for significant environmental effects, and requires the preparation of an individual EA.

It should be noted that each of the foregoing parent Class EAs include "bump-up" provisions that enable the Minister to order that an individual EA be prepared for particularly significant or controversial projects that would otherwise be planned and implemented in accordance with the applicable Class EA procedures. It appears, however, that very few bump-up requests (also known as "Part II orders") have been granted by the Minister to date, as discussed below. It has also been suggested that there has been a proliferation of bump-up requests in relation to relatively benign projects (i.e. speed bumps on residential streets).

In the context of the transit/transportation sector, one of the major drawbacks of the existing EA regime is that there is no Class EA for public transit projects proposed by authorities other than GO Transit. Thus, municipal transit projects generally have to undergo an individual EA (or be exempted from the EA Act), rather than be expedited through the streamlined Class EA planning procedures in place for road infrastructure. As noted in the attached Report of the Transportation Table, EA procedures that apply to "transit lagged behind those that apply to building roads", which means that "municipal transit systems are currently put to a higher test than other transportation projects" (page 2).

Given the Ontario government's "Growth Management Strategy", and given the provincial commitment to contain urban sprawl and combat gridlock, the need for Class EA coverage for public transit has assumed renewed urgency in order to "level the playing field" between municipal transit and road projects. Accordingly, the Executive Group endorses the Transportation Table's recommendation that transit projects be incorporated within the MEA Class EA, as discussed below (see Recommendation 37).

The Executive Group received strong public support in relation to this recommendation. For example, a submission received from a memberof the public supported "preferential treatment of green transportation infrastructure" by including transit within the MEA Class EA because "investing in transit… is an investment in sustainable communities rather than a drain on the public purse." Another commentator supported Class EA coverage of transit projects, but cautioned that clear guidance is needed to identify *bona fide* transit projects which warrant Class EA treatment to ensure that transit facilities are not simply "bundled" with large-scale highway projects in order to avoid triggering an individual EA for such projects.

"Need"

It should be noted that the term "need" does not actually appear within the EA Act, but Joint Board jurisprudence[29] has established that certain provisions of the Act implicitly require "need". For example, the Board has held that an examination of "need" is necessarily implied by the EA Act's requirement that proponents must describe the "rationale" for the proposed undertaking and its alternatives: see subsection 6.1(2)(b). Similarly, the Board has held that the purpose section of the EA Act (section 2) also requires the proponent to prove that there is an actual need for the undertaking. According to this reasoning, if there is no demonstrable need for an environmentally risky undertaking, then it is not in the public interest to approve it. This general approach appears to be consistent with the above-noted analysis of the "betterment" and "protection, conservation and wise management" aspects of the purpose of the EA Act.

This Joint Board jurisprudence was recently reviewed by the Ontario Divisional Court, which found that that "need" is an important component of EA planning (at least prior to the Bill 76 reforms).[30] While the Divisional Court judgment was overturned on other grounds,[31] it is noteworthy that the Ontario Court of Appeal did not disagree with the Divisional Court's findings regarding "need". Instead, the Court of Appeal held that it was open to the Minister, on a case-by-case basis, to exclude EA planning issues (such as "need" or alternatives) from Terms of Reference approved under the EA Act. However, even if the Minister has general discretion to exclude "need" from further consideration by proponents in the EA process, it remains uncertain whether he or she should (or should not) exercise this discretion for specific undertakings or classes of undertakings, as discussed below.

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[29] See, for example, *Re Steetley Quarry Products Inc.* (1995), 16 C.E.L.R. (NS) 161 (Jt. Bd.), and *Re West Northumberland Landfill Site* (1996), 19 C.E.L.R. (NS) 181 (Jt. Bd.).

Alternatives

A robust EA planning and decision-making process generally requires three types of alternatives to be examined by proponents: (a) "alternatives to"; (b) "alternative methods"; and (c) the "null" (or "no go") alternative. "Alternatives to" are generally regarded as functionally different ways of dealing with a particular problem or opportunity (i.e. waste diversion is an "alternative to" waste disposal). "Alternative methods" refer to different operational options or ways of carrying out the same activity (i.e. establishing a new landfill or expanding an existing landfill, or utilizing engineered facilities or "natural attenuation" designs, are "alternative methods" of carrying out waste disposal). The "null" (or "no go") alternative refers to the assessment of the environmental risks and benefits if the proponent simply does nothing to address the identified problem or opportunity.

"Need" and Alternatives in Individual EAs

For individual EAs prepared under Part II of the EA Act, section 6.1(2) specifies that, among other things, proponents must:

- describe and state the rationale for the undertaking, alternatives to the undertaking, and alternative methods of carrying out the undertaking;
- describe the expected environmental impacts from (and necessary mitigation measures for) the undertaking, alternatives to the undertaking, and alternative methods of carrying out the undertaking; and
- evaluate the environmental advantages and disadvantages of the undertaking, alternatives to the undertaking, and alternative methods of carrying out the undertaking.

The Ontario Court of Appeal has indicated that there is a "presumption" that all of the foregoing matters should be considered by proponents during the EA process, although the Minister has residual discretion to approve Terms of Reference which exclude certain matters where appropriate.[32]

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[30] *Sutcliffe et al. v. Ontario (Minister of Environment) et al.*, (2003), 2 C.E.L.R. (3d) 303 (Ont. Div. Ct.), per Lang and Kurisko JJ.

[31] *Sutcliffe et al., v. Ontario (Minister of Environment) et al.*, (Aug. 25, 2004), CA File No. C40916 (Ont. C.A.), 7 C.E.L.R. (3d) 184. Leave to appeal the Court of Appeal's judgment to the Supreme Court of Canada is currently being sought by the judicial review applicants.

[32] *Ibid*, para.23. The Court opined that where the Minister purports to exclude most or all of the prescribed EA matters, he or she will be subject to judicial review since such a constrained EA may be inconsistent with the overall purpose of the Act and the public interest.

To date, however, it appears that "scoped" Terms of Reference have been the rule rather than the exception under Ontario's EA program. For example, the Executive Group has been advised by MOE that since 1997, 23 Terms of Reference have been approved for waste undertakings. Of these, 19 were "scoped", and only 4 were not. Despite this extensive scoping track record, the MOE still has not finalized any policies or guidelines which clearly articulate circumstances where the Minister should – or should not – approve scoped Terms of Reference. In the view of the Executive Group, the continuing absence of such policy direction undermines clarity, predictability, and accountability within the EA program.

Accordingly, the Executive Group is recommending that sectoral working groups should be established as soon as possible with a mandate to develop sector-specific policies and procedures that clearly delineate the nature and scope of EA requirements for different categories of projects (see discussion below). However, the Executive Group recognizes that it may take some time for the working groups to complete their work, and to have the results of such work reflected in sectoral regulations under the EA Act.

Therefore, as an interim measure, the Executive Group recommends that the MOE should revise its draft TOR guideline to ensure consistency with this report, and to achieve conformity with the Court of Appeal's judgment in the *Sutcliffe* matter. In particular, the revised TOR guideline should, among other things, clearly emphasize the importance of "need" and "alternatives to" analysis, and should narrowly prescribe those circumstances where the Minister may limit or scope the consideration of "need" and "alternatives to" within a proponent's EA process (i.e. where the proposed undertaking is consistent with applicable provincial policy). Prior to finalizing the revised TOR guideline, the MOE should post the revised guideline on the EBR Registry for public review and comment.

"Need" and Alternatives in Class EAs and O.Reg.116/01

Section 14(2) of the EA Act prescribes the mandatory content requirements for Class EAs, but does not expressly mention project "rationale", "alternatives to", or "alternative methods". Nevertheless, certain approved Class EAs require proponents of projects within the prescribed "class of undertakings" to consider a limited range of alternatives before selecting and implementing a preferred option.

For example, the MNR's Class EA for Provincial Parks and Conservation Reserves establishes a project evaluation/consultation process for Category B and C projects that, among other things, requires the proponent to collect and evaluate information on:

- alternatives to the project and alternative methods of carrying out the project, and the rationale for selecting the preferred alternative over the other alternatives considered;
- where there are unresolved issues, new approaches to meet the need that the project is intended to address; and
- for Category C projects, the implications of not proceeding with the project (the "no-go alternative").

Depending on the nature of the project, proponents under Class EAs may also be required to demonstrate "need" for their projects at the local level. Assuming that "need" is adequately demonstrated, the proponent may proceed with the project, provided that proponents otherwise comply with the planning, consultation and documentation requirements prescribed under the applicable Class EA. At all times, however, it remains open to the Minister to "bump-up" a particular project to an individual EA which, among other things, could require a demonstration of "need" before the undertaking can proceed.

For example, the MNR's Class EA for Provincial Parks and Conservation Reserves requires proponents of Category B projects to provide information on the purpose of the project, including the problem or opportunity being addressed. Similarly, this Class EA requires proponents of Category C projects to describe "what is to be accomplished by the project (the problem, opportunity or issue) and why".

Similarly, for the transportation sector, the June 2000 Municipal Engineers Association Municipal Class EA begins with the requirement to identify the "problem or opportunity" and follows this up with two distinct requirements to assess alternatives: Phase 2 "Alternative Solutions" and Phase 3 "Alternative Design Concepts". The July 2000 Ministry of Transportation Class EA for Provincial Transportation Facilities begins with a requirement for a "Transportation Needs Assessment" and, depending on the project, requires up to four distinct considerations of alternatives: Planning Alternatives, Preliminary Design Alternatives, Detail Design Alternatives and Construction Method Alternatives. The recently approved December 2003 GO Transit Class EA begins with a Stage 1 "Problem Identification/ Needs Analysis" and follows this up with two distinct requirements to assess alternatives: Stage 2 "Concept Alternatives" and Stage 3 "Preliminary Design Alternatives".

For the energy sector, the 1992 Hydro One Class EA for Minor Transmission Facilities begins with the requirements to "Establish Need" and follows this up with requirements to assess "Alternatives to the Undertaking" and "Identify and Evaluate Alternative Methods". Similarly, the August 1993 Class EA for Modifications to Hydroelectric Facilities begins with the requirement to identify the "Problem or Site Opportunity" and follows this up with requirements to consider "Alternatives to Modification Projects" and "Alternative Methods of Carrying Out Modification Projects". On the other hand, the MOE "Guide to EA Requirements for Electricity Projects" under O.Reg. 116/01 does not expressly require proponents to address "need" or alternatives during either the environmental screening or environmental review stages for Category B projects. While not a Class EA *per se*, this Guide's treatment of "need" and alternatives provides a further example of the inconsistent treatment of "need" and alternatives within and between sectors subject to the EA Act.

In the attached Report of the Energy Table, the public interest importance of "alternatives to" analysis is clearly recognized:

> The Panel agrees that a defensible analysis of "alternatives to" is necessary to ensure appropriate public accountability for decisions made on energy projects (subject to the Act) because it is at this strategic decision-making point when the most dramatic changes can be made to reduce and avoid environmental impacts. Examples for the energy sector include strategic choices to: (a) support energy conservation to reduce the need for

generation; and (b) promote renewable energy supplies and distributed energy production rather than strictly conventional approaches (page 7).

As noted by the Energy Table, the question is not whether "alternatives to" should be considered, but how and at what point of the planning process. In the view of the Energy Table, it is up to the Government of Ontario to "complete the strategic analysis of need and alternatives for energy", and "to identify the optimum mix of projects to be subject to the project-specific EA process" (page 8). The Executive Group generally agrees with this suggestion and strongly urges the development of overarching provincial energy planning or policy.[33]

Moving Forward: Development of Sector-Specific EA Procedures

As described above, Ontario's EA program has generally been plagued by inconsistency regarding which undertakings are subject to (or exempted from) the EA Act, and uncertainty regarding the nature and extent of EA obligations imposed upon those undertakings that are subject to the EA Act. Hence, the Executive Group has sought to lay the foundation for a more equitable, predictable and rule-based path of EA planning and decision-making that can be readily understood by proponents, participants and public agencies.

By equity, the Executive Group means an EA process where undertakings in all sectors are subject to the same general criteria and procedure for assessment, particularly when projected impacts and benefits are similar. Thus, the Executive Group is recommending that the required level of detail and stages of EA requirements should depend upon the significance of the environmental risks and benefits posed by the specific undertaking.

By predictability, the Executive Group means an EA process where all stakeholders – proponents and other participants – can clearly identify and understand how an EA will take place long before the planning and decision-making process begins for a specific undertaking. The need for greater predictability was also clearly articulated in the recommendations of the Sectoral Tables (i.e. Transportation Table's Recommendation 16, and Waste Table's Recommendation 1).

The Executive Group also received submissions from the public that supported the creation of clearer and more consistent procedural requirements. For example, a submission supported "the need to establish clear, prescriptive rules for proponents", particularly in relation to public consultation requirements and Terms of Reference content (e.g., cumulative effects analysis). Another submission recommended that "consistency in EA requirements for all projects be worked towards" in order to produce improvements in the EA process.

Therefore, the Executive Group identified the need for sector-specific assessment standards and procedures which would seek to categorize undertakings within a sectoral "grid" or procedural framework according to their public benefits and environmental significance as articulated in the general EA principles and sector-specific policies. Each stream or component of the "grid" would clearly prescribe, among other things, appropriate documentary requirements, public consultation requirements, and EA planning/approval criteria for projects caught within that category.

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[33] It should be further noted that the province has recently announced certain energy initiatives that are relevant to the Energy Table's recommendations. For example, the Ontario government has proposed to create and direct the Ontario Power Authority to prepare an integrated system plan, which will be prepared in a consultative manner and publicly reviewed by the Ontario Energy Board. However, given that implementation details have not been finalized to date, it is difficult for the Executive Group to determine whether such a provincial plan should itself be subject to the EA Act. In any event, there can be little doubt that such a plan is urgently required and could have important implications for EA coverage and content within the energy sector.

The Executive Group has drafted a suggested framework to serve as a template to review, revise and develop procedures for each sector, which builds on those frameworks that currently exist in the electricity and transportation sectors, and which are absent in the waste sector.

Based on a careful review of procedural issues that arise within each sector, this suggested procedural framework classifies only those undertakings that may be considered to be *projects*. This terminology is deliberate: the proposed procedure applies to those undertakings that involve a specific *project*, namely proposed physical enterprises and activities. This kind of undertaking is considered distinct from proposed *plans* or *programs* covering classes of proposed projects. The proposed chart does *not* cover these latter kinds of undertakings. Where applicable, the definition of project is broad, covering the entirety of what is physically proposed by one proponent or more, if a joint venture is involved or one group of enterprises or activities is inter-related with another group of enterprises or activities.

For projects, the suggested procedure sets out five categories (1, 2, 3, 4, and 5), with each category prescribing EA requirements that reflect the degree of environmental risks and benefits associated with a project within the category. The key challenge to successful implementation of the proposed approach is the development of assessment-specific provincial policy for each of the three identified sectors: energy, transportation, and waste.

Where applicable provincial policy exists, the applicable project category is determined project-by-project, based on specific review of the four-part project triggers. The approach is objective, not subjective. To determine the *correct* category for a specific project, one must start with the two-column test of benefits, such that the proposed project satisfies both tests. Where a project satisfies the two-column benefits tests for multiple project categories (e.g., categories 3 or 4), it is necessary to review the two-column test of risks for each potentially applicable project category and, reviewing *each* column of risk, apply the highest applicable category to the whole project.

Consistent with the EA Act, the proposed approach recognizes that there may be *exceptional* circumstances where a specific project warrants more detailed or less detailed scrutiny than is provided in the procedures chart. In such circumstances, application for variation may be made to the Minister; however, to promote project certainty, we suggest that the application would be deemed to be denied within 30 days unless the Minister specifically responds otherwise in writing.

Within the assessment process, the chart provides complete integration of trigger issues and assessment requirements, such that higher category projects involve more serious trigger issues and thus require more detailed assessment. To ensure consistency and clarity, all assessment documents have a prescribed form and length according to category of assessment. Similarly, the role of the public and available resources for peer review increase as project issues increase in seriousness.

Within the suggested procedural grid, the EAAB would have lead responsibility to: (1) integrate EA with other applicable assessment (e.g., *Canadian Environmental Assessment Act* (CEAA)), planning (e.g., *Planning Act* and *Niagara Escarpment Planning and Development Act*) and design (e.g., EPA and OWRA) approvals; (2) ensure the implementation of provincial policy for EA; (3) coordinate and complete the timely government review of category 3, 4 and 5 projects; and (4) ensure all EBR notice requirements are met. A major change to the current process is that there is very limited room or time devoted to bump-up requests, since the Executive Group is recommending that such matters be adjudicated by the ERT, rather than by the Minister (see Class EA discussion below).

The options for ERT hearings are designed to provide predictability to all parties by including specific approval tests, timelines and funding rules. In all instances, hearings should occur on the basis of major issues: where an issue appears frivolous or vexatious, the ERT would have the ability to strike the matter in whole or in part (a power currently used by the Ontario Municipal Board under the *Planning Act*). This power has been used by the Environmental Assessment Board and the Environmental Appeal Board in the past.

Environmental Assessment Practices and Procedures: Draft Charts

All parties making up the Advisory Panel have agreed that Ontario's EA program must deliver results "on the ground". In seeking to deliver such results, the Executive Group has judged it essential to move beyond principles and policies into procedures. The Executive Group has concluded that it needs to provide detailed recommendations on procedures, not because it presently has all the answers, but rather because it believes that its proposed approach provides a solid starting point for further discussions about classes of projects within specific sectors, and further discussions about treatment of specific projects subject to designation, exemption, bump-up or elevation requests.

These detailed recommendations have two forms: text and charts. The text is intended to: (1) describe the issues covered by the charts; and (2) provide a context for the recommendations set out in the charts. The charts address: (1) a general template for procedures across all three sectors; and (2) an annotation explaining how the general template departs from existing procedures for each of the three sectors.

We begin with the text and then provide the charts; however, given the detail present in both the text and charts, we expect that readers will be required to review both items iteratively.

(1) Description of the Issues covered by the Charts:

The underlying principle of the proposed procedural chart is that the nature and extent of EA requirements should be dependent upon the environmental benefits and risks associated with the particular undertaking. In general terms, undertakings that pose benefits without corresponding risks should be given priority under the EA Act in the sense that their process and approval standards are easier to meet than undertakings that present risks.

The proposed procedural framework has been drafted to be implemented largely without changes to the EA Act or other legislation; however, it will require reforms to regulations, policies and/or procedures, including the development of sector-specific policies and priorities, as discussed above.

Based on a careful review of procedural issues that arise within each sector, the present proposed framework classifies only those undertakings that may be considered to be *projects*, namely proposed physical enterprises and activities. Where applicable, the definition of project is broad, covering the entirety of what is physically proposed by one proponent or more, if a joint venture is involved or one group of enterprises or activities is inter-related with another group of enterprises or activities.

The template set out below provides the basis for the procedural matrix. Key terms are explained before proceeding to the specific trigger and procedural requirements associated with each project category.

General Template for Procedures Chart

Project Category	Project Triggers			Assessment Process				Hearing	Time
	Benefits	Risks		Phases	Documents	Public Role & Resources	Approval Test(s)		
	Provincial	On-site	Off-site						

Project Category: This column sets out the applicable project category, within the 5-category scheme. It should be noted that the five-part categorization of projects corresponds with the required phases in the prescribed environmental assessment process, such that category 1 projects involve a 1-phase assessment process, category 2 projects a 2-phase assessment process, etc.

Project Triggers: This heading is intended to set out the criteria for determining what category of assessment is required for a particular project, or a class of projects. It contrasts with the present approach to triggering assessment. The present approach (e.g., waste sector and electricity sector) expressly considers the scale of facility only, with implicit but not express consideration of the type of facility. The approach is also predominantly negative in that larger-scale projects trigger greater assessment. The proposed approach seeks to consider both benefits and risks. The *benefits* considered are that of advancing provincial policy, including the PPS and the anticipated sector-specific policies proposed earlier in this Report. Where a project advances provincial policy, the present proposal is to limit such a project to a category 4 assessment, thereby restricting category 5 assessments to those projects that are not consistent with provincial policy. On the other hand, projects which are consistent with Provincial Policy must be categorized as category 4, unless they raise no risks, in which case they are category 1. The *risks* considered are those associated with a specific project both *on-site* and *off-site*. The focus on risks is intended to minimize the conundrum that would be associated with using effects or impacts to determine project triggers: it is difficult to make these determinations without doing an assessment. Thus, consideration of risk is intended to consider effects generally having regard to the proposed project, its duration, and where appropriate, a specific location. Duration is a critical issue as any project having an anticipated duration of more than 15-20 years is deemed to be multi-generational, a term relevant to its impacts on future generations. In all cases, the proposed trigger issues are intended to apply to a project without consideration of mitigation measures as the assessment process is intended to consider mitigation in detail. The sole and limited exception to this rule on mitigation concerns mitigation that meets all aspects of the following three-part test: (1) it does not trigger or require approval under any other regulatory regime (e.g., EPA, OWRA); (2) it has been recognized in previous EAA approvals; and (3) it has a proven record of success.

Assessment Process: This heading sets out the various procedural and substantive standards associated with each project category. The key to this aspect of the table is the assessment phases. The *phases* of assessment are tailored to the specific assessment category, not only in the sense that the five project categories are matched to assessment phases, with category 1 projects triggering 1-phase assessments, et cetera, but also in the sense that the specific phases are directly related to kinds of risks associated with the project. Thus, for example, a project assessment will require express consideration of alternative locations where its risks include multi-generational harm to human health and/or regionally or provincially significant resources. In turn, *documents* are also tied explicitly to phases, with each assessment document required to describe each aspect of the applicable assessment phases, thereby increasing in length with each project category. Similarly, the *public role & resources* also increase with each project category: not only are there more requirements for notice and thus opportunities to participate in an assessment process, there are also increasing resources made available beginning with category 3 projects. The *approval test(s)* is or are the substantive test or tests that an assessment must meet to receive approval. The test is calibrated to accord with the specific requirements of each applicable phase of assessment, thereby increasing in complexity with each increase in project category. In sum, the proposed assessment processes tailor phases, documents, consultation and approval tests to each respective project category, with the most onerous requirements applying to category 5 assessments.

Hearing: This heading refers to the ability to request or require a public hearing by an independent body, such as the Environmental Review Tribunal or a joint board struck under the CHA. For lower category assessments, no hearings are available. Hearing opportunities exist for category 3, 4, and 5 projects. A critical issue for each category is the test for obtaining a public hearing. Currently, the EA Act provides that for individual EAs, any person has a right to request that the Minister refer the application to a hearing and, if requested, the Minister shall refer the application to the Tribunal under section 9.1 unless in his or her absolute discretion, (a) the Minister considers the request to be frivolous or vexatious; (b) the Minister considers a hearing to be unnecessary; or (c) the Minister considers that a hearing may cause undue delay in determining the application. The Executive Group believes that this discretion-laden approach to hearings must be reformed if the EA process is to better deliver benefits: in particular, the EA test for a hearing for any sector subject to an EA procedures chart should be reformed to focus on the issue of benefits as much as impacts. This leads to three general situations:

(1) projects advancing provincial policy (e.g., green projects, windmills);
(2) projects consistent with provincial policy (e.g., natural gas generation); and,
(3) projects inconsistent with provincial policy (e.g., coal fired power plants).

For projects advancing provincial policy, there would be no direct right to a hearing; rather, there is either no hearing at all (i.e., category 1 or 2 projects) or a right of interested persons to request a hearing, depending on the type of multi-generational impacts that are at risk (i.e., category 3 or 4 projects).

For projects that are merely consistent with provincial policy, there is either no hearing where there are no risks of multi-generational impacts (i.e. category 1 projects) or, where the project risks multi-generational impacts (i.e., category 3 or 4 projects), there is an opportunity to request a hearing (category 3 nuisance impacts only) or to require a hearing (category 4 risks of impacts on health or regionally or provincially protected resources) available to interested persons.

For projects that are inconsistent with provincial policy (i.e., category 5 projects), there is a direct right to a public hearing available to interested persons.

Where there is a hearing, the hearing parameters are designed to provide predictability to all parties by including specific approval tests, timelines and funding rules. The proposed timelines set out for hearings are deliberate and should be accompanied by timelines regarding all other aspects of the hearing route that shorten current timeframes associated with bump-ups (or legally speaking, Part II orders). In all instances, hearings should occur on the basis of major issues: where an appeal appears frivolous or vexatious, the ERT would have the ability to strike the appeal (a power currently used by the Ontario Municipal Board).

Time: This heading refers to the overall timeframe for each category of assessment, including EA Act hearings if applicable. The timeframe does not include integrated processes or appeals for projects requiring multiple approvals. While the Executive strongly supports the integration of multiple approval processes and increased use of the *Consolidated Hearings Act* (as discussed below), the work required to properly integrate these multiple processes is beyond the scope of the current work. Consistent with the rest of this proposed chart, timeframes increase with each project category.

Note on numbers used in the chart. In reviewing the proposed charts, one of the most difficult topics is the specific numbers proposed (e.g., time limits, page limits, etc.). The reader is asked to regard these numbers as the starting point for discussion, not a final proposal; however, as no such number is isolated, but embedded in a context involving five categories of project, the reader is also asked to consider each such number with regard to the numbers set out in the same column for all other project categories.

(2) Context for the Charts

The proposed chart seeks to address two related objectives: first, to integrate the various components of the EA process; and, second, to balance the ways that EA serves the interests of proponents, government and the public.

The proposed chart seeks to address the integration objective in four ways. First, it integrates benefits and harms posed by proposed projects, such that assessment procedures are based upon both benefits and risks, and not just on the scale of the project or its identified risks. Second, it integrates provincial policy and phases of assessment, such that projects advancing provincial policy trigger less, more expeditious assessment than projects which do not. Third, it integrates all EA process issues, including required phases of assessment, document content and length, public participation and funding. Fourth, it integrates the test for EAA approval with the phases of assessment, such that more contentious projects face more onerous approval tests. Fifth, it integrates project categorization with phases of assessment and EA documents, such that category (1) projects have one phase of assessment and require a phase 1 EA document, and category (2) projects have two phases of assessment and require a phase 2 document, et cetera. This is intended to increase the overall transparency of EA procedures to all parties.

The proposed chart seeks to balance the interests of all major EA stakeholders in the following respects. Proponents get timelines and increased efficiency; members of the public get more notice and resources and thus increased effectiveness. Proponents get focus and predictability; members of the public get increased rigour. For government, the procedures represent a shift from broad discretion to clear rules. When implemented, these rules will increase and improve implementation of provincial policy. Less discretion and more rules will provide more expeditious decision-making and thus greater efficiency of human resources. Less discretion and more rules will also provide increased transparency. Put more colloquially, the proposed reforms deliver to government more steering and less rowing.

Project Category	**Project Triggers**			**Process**				**Hearing**	**Time**
	Benefits	**Risks**		**Phases**	**Documents**	**Public Role & Resources**	**Approval Test(s)**		
	Provincial	**On-site**	**Off-site**						
1	Advances/ consistent with provincial policy	None/ very limited	None/ very limited	1 phase: project description	Category 1 Assessment (prescribed form and length: 5 pg plus appendices)	• Local notice of project completion; • www-accessible documentation; • no financial resources	•Conformity to standard *and* •purpose of EA Act	None	0-1 month

Notes:

1. The key trigger issue for this category of project is that there is little or no risk of impacts, both on-site and off-site. Projects meeting this rigorous standard on impacts are not required to show benefits, i.e., advancing provincial policy, but they must be consistent with provincial policy, not inconsistent.
2. Projects fitting the trigger requirements face a 1-phase process. This requires only that the proponent prepare a project description and file public notice of the project. There is no opportunity for comment. This process therefore resembles current class EA projects that are pre-approved; however, the proposed chart departs from the "pre-approved" process under various Class EAs by formally requiring the creation of a project description document and public notice of the project, so that any claim for approved status is open and transparent. The approval test is also minimal, requiring only that the project conform to this procedural standard (i.e., meet the trigger requirements).
3. There is no hearing available to challenge projects in this category; however, where this procedural chart has legal status, a project categorization would be subject to legal challenge or prosecution for non-compliance with the EA Act.
4. The time for projects in this category is minimal, depending solely on the time required to describe the project and determine that its risks are minimal.

Examples: transportation: pre-approved projects (Category A MEA); energy: windmills in limited number.

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
2	Advances provincial policy	None/ very limited	•None/ very limited *and* •potential for cumulative impacts with other similar projects	2 Phases: •project description; •cumulative effects	Category 2 Assessment (prescribed form and length: 10pg plus appendices)	• Local notice of project completion *and* Council decision; • www-accessible documentation; • no financial resources	•Conformity to standard *and* •purpose of EA Act *and* •local Council approval	None	2-3 months

Notes:

1. The key trigger issue distinguishing a category 2 project from a category 1 project is the risk of causing an off-site cumulative impact. Thus, where a project does not appear to have, by itself, risks of serious impacts on-site or off-site, it should be considered as a category 1 or 2 project. However, where the project is proposed in combination with other projects in proximity to each other or in the same municipality, it should be considered a category 2 project so that the local municipal council may determine the acceptability of the numbers of these proposed projects.
2. Consistent with the trigger issues, the process issue for a category 2 project is the requirement to consider the potential cumulative effects and to provide notice of the project and of the required consultation with the local municipality.
3. There is no hearing under the EA Act from this category of project to any administrative tribunal.
4. The time limit for this category of project is still limited, but longer than a category 1 project to address cumulative effects.

Examples: energy: wind farms; transportation: transit stations

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
3	Advances provincial policy	•May/ may not have potential for on-site impacts, but not upon provincially / regionally protected resources/ features	•Potential for cumulative effects with other projects; *and/or* •potential for multi-generational off-site nuisances (e.g., noise), but not nuisance risking health or provincially/ regionally protected resources	3 Phases: - •project description; •alternatives; •cumulative effects	•Category 3 Assessment (prescribed form and length: 25 pg plus appendices); •Category 3 Government Review (prescribed form, scope & 30-day time limit at end)	• Local and EBR notice of project proposal and project completion; • EBR notice of completion of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of assessment process; • if public concern, 1-day mandatory mediation, prior to appeal period	•Conformity to standard *and* •purpose of EA Act *and* •most reasonable alternative to minimize on-site & off-site impacts	•ERT request for hearing following mediation; •if granted, maximum 3-day hearing unless further leave	6-9 months

Notes:

1. The key change distinguishing a category 3 project from a category 2 project is that it may have on-site and off-site impacts; on the other hand, the key feature distinguishing a category 3 project from a category 4 project is that the category 3 project both advances provincial policy and has limited risks of impacts (i.e., no risk of on-site impacts upon regionally or provincially protected resources and no risks of off-site multi-generational impacts on human health and/or regionally or provincially protected resources).
2. Consistent with these trigger issues, the process for a category 3 project adds one phase to consider alternatives. The kinds of alternatives are not specified, but the purpose of the requirement is to show that, the proposed undertaking is preferred among reasonable alternatives. Furthermore, because the project risks causing multi-generational impacts to neighbours, there is provision for participant funding to review compliance with the procedure regarding trigger, process and approval requirements.
3. There is provision for hearings for category 3 projects. One option is to permit any two interested persons to seek leave to appeal the assessment result, in whole or in part, to the Environmental Review Tribunal, if they meet the test set out above in the text. If leave is granted, there is provision for a maximum 3-day hearing unless further leave is granted by the Tribunal.
4. The anticipated time to carry out this procedure, including any required hearing, is 6-9 months.

Examples: waste: transfer stations, small waste recovery facilities; transportation: new on-road transit routes.

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
4	Advances/ consistent with provincial policy	May/ may not have potential impact upon provincially / regionally significant resource	•Potential for cumulative effects with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* impacts upon provincially/ regionally protected resource	4 Phases: •project description; •alternative designs; •alternative locations; •cumulative impacts	•Category 4 Assessment (prescribed form and length: 50 pg plus appendices); •Category 4 Government Review (prescribed form, scope and timing, concluding with 45-day time limit at end)	• Local and EBR notice of project proposal & each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each of phases 3 &4 in assessment process; • if public concern, 1-day mandatory mediation for each of phases 3 & 4 following peer and government review and prior to any appeal period	Conformity to standard *and* purpose of EA Act *and* most reasonable design *and* reasonable location	• ERT request for hearing following mediation; •maximum 10-day hearing all phases unless special permission; •intervenor funding (prescribed eligibility and approach)	1-1.5 years

Notes:

1. The key trigger issue for a category 4 project is that it includes projects that do not advance provincial policy, but are merely consistent with it. For projects that do advance provincial policy, a category 4 project is distinguished from a category 3 project by the risks of on-site or off-site impacts it may cause: a category 4 project may risk on-site impacts upon regionally or provincially protected resources or off-site multi-generational impacts on human health and/or regionally or provincially protected resources.
2. Consistent with these trigger issues, the process for a category 4 project includes two phases on alternatives: the requirement to consider alternative designs and the requirement to consider alternative locations. The purpose of these requirements is to show that, the proposed undertaking is preferred among reasonable alternatives. Furthermore, because of the issues raised by the project, there is provision for participant funding to review compliance with the procedure regarding trigger, process and approval requirements.
3. The type of hearing process for a category 4 project differs depending on whether the project advances provincial policy (e.g. leave to appeal required) or is merely consistent with such policy (variable requirements, as set out in the text). In all cases triggering a hearing, there is provision for a maximum 10-day hearing unless further leave is granted by the Tribunal.
4. The anticipated time to carry out this procedure, including any required hearing, is 1 to 1.5 years, including any required EA hearing.

Examples: transportation: transit lines.

Project Category	Project Triggers			Process				Hearing	Time
	Benefits	Risks		Phases	Documents	Public Role & Resources	Approval Test(s)		
	Provincial	On-site	Off-site						
5	Not consistent with provincial policy	May/ may not have potential impact upon provincially / regionally significant resource	•Potential cumulative impacts with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* •impacts upon provincially/ regionally significant resource	5 phases following TOR: (e.g., project description; need; alternative designs; alternative locations; cumulative impacts)	•Category 5 Assessment: prescribed form and length (100 pg plus appendices); •Category 5 Government Review (prescribed form, scope and timing for each phase, concluding with 60-day time limit at end)	• Local and EBR notice of project proposal and each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each phase of assessment process; • if public concern, 1-day mandatory mediation for each phase following peer and government review and prior to appeal period	•purpose of EA Act *and* •Conformity to TOR *and/or* - need for project; - most reasonable design; - reasonable location; and - project advantages outweigh disadvantages)	• ERT request for hearing following mediation; ERT hearing following mediation (10-day maximum for each phase where TOR permits), unless frivolous; •maximum 10-day hearing per phase unless leave; •intervenor funding (prescribed eligibility and approach)	2-3 years

Notes:

1. The key trigger issue for a category 5 project is that it deals with projects that are inconsistent with provincial policy. Currently, this category of project is also considered to be a project that triggers individual EA; however, were the proposed procedure adopted through regulation or class approval, that instrument could make provision for a category 5 that does not involve individual EA.
2. Consistent with the principal trigger issues, the process for a category 5 project includes not only the four phases present in a category 4 assessment, but also a new initial phase to specifically address need for the project. Similarly, like category 3 and 4 projects, the nature of the issues raised by a category 5 project supports participant funding to review compliance with the procedure regarding trigger, process and approval requirements.
3. For category 5 projects, public hearings are mandatory. Unlike other categories, the identified maximum hearing length applies to *each* phase of the assessment unless the Minister (e.g., TOR) or the Tribunal determines otherwise.
4. The anticipated time to carry out this procedure, including any required hearing, is 2 to 3 years, including any required EA hearing.

Examples: waste: new landfill or incinerator waste disposal sites; transportation: new arterial roads.

ISSUE: PROVINCIAL ADVISORY BODY

From the early 1980s to the mid-1990s, Ontario's Environment Minister created and maintained the provincial Environmental Assessment Advisory Committee ("EAAC"), which was a small, independent body that provided expert advice to the Minister on a broad range of EA-related matters. However, EAAC was abolished by the previous government in 1995, and EAAC has not been replaced to date. The continuing absence of an "arm's length" provincial advisory body has deprived the Minister of external expert advice on EA policy, guidelines, procedures, and case-specific issue resolution. This absence has also deprived the public of enhanced opportunities to review and comment upon crucial or controversial EA matters.

RECOMMENDATION 6: PROVINCIAL ADVISORY BODY

The Minister should establish an independent advisory body to provide advice to the provincial government and solicit public input in relation to EA matters as may be warranted.

RECOMMENDATION 7: FUNDING FOR ADVISORY BODY

Funding for the advisory body should be drawn, at least in part, from revenues generated from EA application fees (as described below in Recommendation 24).

DISCUSSION

EAAC was formally established in 1983, and its members were appointed from outside government in order to provide impartial expert advice to the Environment Minister on EA matters referred by the Minister from time to time. The members were largely drawn from academic and legal backgrounds, and they received administrative support and modest per diems from the Ministry for their specialized work.

During its tenure, EAAC provided the Minister with advice on numerous case-specific matters, such as bump-up, designation and exemption requests. In addition, EAAC also reviewed and commented upon larger or systemic EA issues, such as legislative and regulatory reform[34] or integration of EA and land use planning.[35] In order to prepare its reports and recommendations, EAAC frequently provided public notice, solicited public input, and held informal public meetings among interested persons to discuss the issues in dispute. Thus, EAAC was highly regarded by many EA stakeholders, and was "proven time and time again to be a useful watchdog [and] often put forward useful compromises and well-reasoned recommendations."[36]

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[34] See, for example, EAAC's two-part report *Reforms to the Environmental Assessment Program* (Oct. 1991 and Jan. 1992).

[35] See, for example, EAAC's *Report 38: The Adequacy of the Existing Environmental Planning and Approvals Process at the Ganaraska Watershed* (1989); and *Report 41: Environmental Planning and Approvals in Grey County* (1990).

[36] R. Northey and J. Swaigen, "Environmental Assessment", in Swaigen & Estrin (eds.), *Environment on Trial* (3rd ed., 1993), page 195.

Nevertheless, EAAC was terminated by the Minister in 1995 on the grounds that EAAC had "completed its job", and that "the Ministry now has a sufficiently sound basis of advice and experience from which to ensure the effective operation of the [EA] program".[37] Not surprisingly, EAAC and other EA stakeholders did not share this opinion, and they objected to the abolition of this cost-efficient mechanism for ensuring broad public input and independent advice in controversial EA disputes.

Shortly after EAAC was disbanded, the EA Act itself was amended to specifically empower the Minister to "appoint committees to perform such advisory functions as the Minister considers advisable" (see section 31(1)(g)). To date, however, this authority has not been used to establish a permanent advisory body, and, in fact, this authority has only been used to establish the EA Advisory Panel on an *ad hoc* basis.

Given the controversy and litigation that has ensued under the EA Act since 1995, the Executive Group concludes that it was premature (if not erroneous) to terminate EAAC. In our view, it is extremely helpful and productive to have a permanent advisory body to solicit broad public input, and to provide expert advice to the Minister, on a number of contentious EA issues that have emerged under the amended Act.

Moreover, as noted above, the Executive Group is recommending that the MOE should develop general EA principles and sector-specific policies to direct the EA planning and decision-making process. With respect to development of general EA principles, the MOE could initiate this by referring this matter to the provincial advisory body and asking for advice on the appropriate content of an appropriate EA Act policy guideline that entrenches such principles.

Similarly, with respect to sector-specific policies, the Executive Group is recommending that the MOE should initiate this process by appointing sector-specific working groups (consisting of proponent, stakeholder and governmental representatives) to develop and consult upon policy content, and to submit proposed policies to the Minister for review and adoption. However, if the working groups are unable to reach a consensus on the proposed policies, or if there are unresolved public concerns about the proposals, then such proposals should be referred by the Minister to the provincial advisory body for further consideration and resolution of stakeholder concerns if possible.

It should be further noted that the mandate of the *ad hoc* EA Advisory Panel will expire shortly, and following the dissolution of the Panel, there will be no advisory body to oversee and report upon the implementation of the critical changes recommended in this Report. Given the importance and magnitude of the legislative, regulatory and administrative reforms described in this Report, the Executive Group believes that a provincial advisory body could play an extremely useful role in assisting the MOE in developing these various changes in an open and consultative manner. In our view, merely posting an EBR Registry notice, and providing a perfunctory comment period under the EBR, will likely be highly inadequate for the purposes of ensuring public input and facilitating informed decisions about the reforms recommended in this report.

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[37] A. Levy, "Environmental Assessment in Ontario" (2002), 11 J.E.L.P. 173, f.n. 95.

For these reasons, the Executive Group recommends that the Minister should exercise her authority under the EA Act as soon as possible to establish a new provincial body and give it a broad advisory function. Funding for the provincial advisory body should be drawn, at least in part, from revenues generated by the EA application fees recommended below in this Report.

The Executive Group hastens to add that it is not our intention to simply recommend a re-incarnation of the previous EAAC. In our view, this new provincial advisory body does not necessarily have to duplicate the previous EAAC model; in fact, there are numerous other options that may be considered when establishing the structure, mandate and composition of this body. For example, consideration could be given to providing the advisory body the ability, on its own initiative or upon the request of Ontario citizens, to inquire into and provide advice on key or urgent EA matters that come to its attention. This flexibility would represent an improvement over the previous EAAC, which could only react to those issues that the Minister had specifically referred to EAAC.

In addition, all requests for designation, exemption, and harmonization orders received by the Minister could be automatically forwarded to the provincial advisory committee for monitoring, comment, and tracking purposes. Such requests should also be routinely posted on the MOE's specialized EA website that is being recommended by the Executive Group, as discussed below.

Finally, it should be noted that there are numerous legislative precedents for the creation of specialized provincial advisory bodies under Ontario's environmental laws. For example, pursuant to section 4 of the *Safe Drinking Water Act*, the Minister has established the Advisory Council on Drinking-Water Quality and Testing Standards, which is currently consulting Ontarians in relation to drinking water standards for small systems (O.Reg. 170/03) and well disinfection (Regulation 903). Similarly, section 10 of the *Pesticides Act* authorizes the establishment of the Pesticides Advisory Committee to review and report back to the Minister on various pesticide-related issues. In addition, section 4 of the *Niagara Escarpment Planning and Development Act* authorizes the establishment of a public advisory committee to make recommendations and provide advice in relation to the Niagara Escarpment Plan. Likewise, section 14 of the *Crown Forest Sustainability Act*author izes the creation of advisory committees in relation to the preparation of forest management plans and manuals under the Act.[38]

These and other precedents demonstrate the utility, versatility and benefits of creating specialized advisory bodies under environmental legislation. Therefore, the Executive Group recommends that a provincial advisory body be established forthwith under the EA Act. This provincial advisory body could not only serve a valuable role in developing EA principles, but it could also provide considerable assistance in developing the implementation details for the numerous other changes recommended throughout this Report.

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[38] It should be further noted that Condition 36 of the 2003 "declaration order" issued under the EA Act in relation to Crown forest management requires the Ministry of Natural Resources to establish two provincial level advisory committees regarding policy and technical matters.

ISSUE: PUBLIC PARTICIPATION

Sections 5.1 and 13.1 of the EA Act currently provide that when preparing Terms of Reference or EA documentation, proponents "shall consult with such persons as may be interested." However, the Act does not provide further direction on what constitutes adequate "consultation", nor does the Act provide any guidance on who may be an "interested person" for the purposes of these sections. These interpretive difficulties are compounded by the continuing absence of any finalized MOE guidance documents regarding public consultation under the EA Act. Furthermore, the ability of First Nations, aboriginal communities, and other stakeholders to meaningfully participate in the EA planning and decision-making process has been significantly affected by the continuing absence of mandatory participant funding mechanisms. Finally, the siting of contentious fixed or linear facilities (i.e. landfills or transmission corridors) has given rise to considerable debate over what constitutes a "willing host" for the purpose of gauging community acceptance of proposed undertakings. This debate is compounded by the lack of explicit siting standards under the EA Act.

RECOMMENDATION 8: PUBLIC PARTICIPATION

The MOE should revise the draft consultation guideline to reflect the recommendations in this report, paying particular attention to the following issues. Following this revision the MOE should consult widely on their guideline before finalizing:

a) identification of "interested persons" within the meaning of the EA Act;
b) provision of timely and effective public notices;
c) ensuring public access to relevant documents and information;
d) provision of adequate comment periods;
e) effective methods and techniques for soliciting public input (including using municipal council proceedings where applicable);
f) provision of adequate resources to members of the public to participate meaningfully in the EA process; and
g) methods for accommodating public concerns and resolving issues in dispute.

RECOMMENDATION 9: PUBLIC PARTICIPATION

Once the consultation guideline has been finalized, the MOE should organize workshops and undertake other measures to ensure that proponents, participants and agencies understand public participation rights and responsibilities under the EA Act.

RECOMMENDATION 10: PUBLIC PARTICIPATION

The Ontario government should develop, with First Nations and aboriginal community input, appropriate protocols, procedures and collaborative agreements to facilitate meaningful participation by First Nations and aboriginal communities in the EA planning and decision-making process, particularly in relation to:

a) improving notice requirements;
b) enhancing comment opportunities;

c) resolving funding issues; and
d) involving First Nations and aboriginal communities as part of the government review team where appropriate under the EA Act.

RECOMMENDATION 11: PUBLIC PARTICIPATION

The Minister should request that the advisory body review and report upon options for obtaining or confirming community acceptance (e.g., willing host) of undertakings proposed under individual EAs and Class EAs. At a minimum, the advisory body should be asked to consider whether there is a need for:
a) inclusive, resourced local bodies to negotiate, monitor and revise agreements;
b) explicit local benefits targeted towards closest neighbours to the site;
c) comprehensive efforts to identify and engage diverse groups within the local community at the earliest planning stages; and
d) an option to site elsewhere if negotiation efforts fail.

DISCUSSION:

(a) Public Involvement in EA Planning and Decision-Making

Under the EA Act, it is the proponent's responsibility to design and implement an EA process that facilitates the effective involvement of all persons affected by, or interested in, the proposed undertaking. For example, the attached Report of the Waste Table states that the EA process must be "participatory" and "include opportunities and resources for participation by all potentially affected parties" (Recommendation 1, paragraph 3). Similarly, the attached Report of the Energy Table identifies the need to "maintain or enhance opportunities for effective public participation in decision-making processes" (page 4).

In order to achieve this fundamental objective, the Executive Group suggests that the following principles should be observed within the EA planning and decision-making process:

- **Interested persons should help plan the undertaking, and should participate in critical decision points within the EA process**. This means that a consultation program should not be carried out as a separate procedure that is parallel or subsequent to the EA planning process. Instead, the EA planning and decision-making process must be built upon the direct involvement and contributions of interested persons;[39]

- **EA planning occurs through a phased sequence of decisions.** This means that meaningful consultation must occur before significant decisions are made, and must be scheduled and implemented in a manner that permits interested persons to make informed contributions to the decisions in question.

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[39] The recitals to the Aarhus Convention of UNECE (United Nations Economic Commission for Europe) recognize the importance that "the respective roles that individual citizens, non-governmental organizations and the private sector can play in environment protection," and note that "in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns": source - "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus Denmark, 1998).

- **Consultation must commence at the earliest possible stage of the EA planning and decision-making process.** This means that interested persons should be consulted long before final and irreversible decisions are made. This is particularly true of the critical upfront decisions regarding the content of the Terms of Reference for an individual EA.

- **Consultation documents must be accessible and understandable.** This means that information provided to interested persons should be complete, intelligible, and free of excessive technical or scientific jargon. Where appropriate, funding should be provided to ensure that interested persons can obtain professional assistance to understand and respond to consultation documents.

- **Consultation must be systematic and flexible.** This means that consultation opportunities and events (i.e. workshops, public meetings, open houses, etc.) should be appropriately scheduled and well-advertised to ensure that interested persons understand the significance and purpose of such consultation efforts. Adequate comment periods should be provided, and the planning schedule should be able to accommodate new information, changes in circumstances, and shifts in public views.

- **The role and effect of consultation must be documented.** This means that all aspects of the consultation must be properly documented. Procedures should be in place to ensure that public concerns and issues are accurately recorded, and that the proponent describes how public input influenced the EA planning and decision-making process.

However, serious concerns have been repeatedly expressed by First Nations, aboriginal communities and various stakeholders (referred to collectively hereafter as participants) that they cannot effectively participate in the planning, approval and monitoring of undertakings subject to the EA Act. They claim that comment periods are too short, relevant documents are too inaccessible, and consultation efforts are too superficial and with no real purpose other than to enable a proponent to report to the EAAB that it has fulfilled its statutory obligation to consult. In addition, concern has been raised that public consultation rights are illusory at best if participants lack sufficient resources to retain the technical, scientific or legal assistance that may be necessary to meaningfully participate in the EA process, as discussed below.

The overall purpose of consultation is the early identification of issues, problems or concerns from the point of view of various participants, so that they can be adequately addressed by the proponent or the MOE. Thus, consultation is intended to be an integral part of the EA planning process by ensuring that all meritorious matters are identified, examined and satisfactorily resolved. Where properly implemented, consultation efforts facilitate "buy-in" of both the process and outcome by participants and the public at large, and contributes to superior results by ensuring all relevant evidence, opinions and perspectives are considered.[40] Proponents maintain that they do make serious efforts to consult, but note that public participation levels tend to be minimal until an EA is well advanced and the preferred undertaking has been determined and announced. By then it is too late and costly to effectively 'start all over' in response to participants' demands.

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[40] According to UNECE, its Aarhus Convention emphasizes the importance of "the role of members of the public and environmental organizations in protecting and improving the environment for the benefit of future generations": source - UNECE press release October 29, 2001 with respect to the "Convention on Access to Information, Public

In addition to being "consulted", many participants (particularly municipalities and those who represent significant groups within the community) often desire "a seat at the table" during the EA process in order to participate in and affect decision-making which occurs along the way, and also to ensure that proper post-approval monitoring is required, conducted and reported. In addition, they want to review the monitoring results and recommendations, and to ensure that all necessary adjustments or remedial measures are promptly implemented and complied with by proponents.

This is particularly true of First Nation and aboriginal communities which are concerned that proposed undertakings may affect treaty and aboriginal rights that are constitutionally protected by section 35 of the Charter. Such concerns have also resulted in the judicial development of a legal duty upon governments to meaningfully consult affected aboriginal peoples and to accommodate their interests or concerns. For example, the Supreme Court of Canada has recently held that this duty is rooted in the honour of the Crown, and that the duty arises when governments have knowledge of aboriginal right or title and are contemplating conduct (i.e. issuance of an environmental permit or approval to a third-party) that may adversely affect it.[41]

In a related decision, the Supreme Court of Canada affirmed that the duty to consult and accommodate applies to provincial governments, but found on the facts that certain procedures established under B.C.'s EA legislation (i.e. involving the First Nation in a "Project Committee" established as part of the environmental review process) satisfied the duty to consult and accommodate.[42]

Although the precise breadth and scope of this "duty to consult" is still being developed by the courts, it is clearly necessary in Ontario to design and implement consultation procedures under the EA Act (and other statutes) that satisfy the province's duty towards First Nations and aboriginal communities.

In some recent EA cases, the EAAB has utilized some intriguing approaches (i.e. entrenching special notification procedures, involving First Nation representatives on the government review team, etc.) where proposed undertakings may affect treaty or aboriginal interests. In the Executive Group's view, such innovative EA practices and procedures should be encouraged and enhanced. At a minimum, the Ontario government (i.e. MOE, Ontario Native Affairs Secretariat, etc.) should, with the direct involvement of aboriginal representatives, develop

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Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus Denmark, 1998). By recognizing "citizens' environmental rights to information, participation and justice, it aims to promote greater accountability and transparency in environmental matters." As well as protecting the environment, it promotes "democracy" by creating "an opportunity for people to express their opinions and concerns on environmental matters and ensure that decision makers take due account of these."

[41] See *Haida Nation v. B.C.*, 2004 SCC 73.

[42] See *Taku River Tlingit First Nation v. B.C.*, 2004 SCC 74

appropriate policy, guidelines and protocols regarding EA consultation with First Nations and aboriginal communities.

It should be further noted that the federal government has recently amended CEAA to improve "communication and cooperation between responsible authorities and aboriginal peoples with respect to environmental assessment", and to formally recognize the value and importance of using aboriginal traditional knowledge during the conduct of EAs.[43] The federal government has also proposed the establishment of an aboriginal advisory committee to offer advice on EA issues such as consultation. In light of these federal initiatives, the Executive Group strongly urges the Ontario government to make efforts to improve and strengthen the role and responsibilities of First Nations and aboriginal communities within Ontario's EA program.

Some proponents, however, may be reluctant to embrace enhanced participatory rights (especially the "seat at the table" concept), maintaining that the entitlement to be consulted does not accord participants the power to insertthem selves into actual decision-making -- to potentially vote on and veto decisions made at various stages in the EA process. Private sector proponents assert that EA was not intended to extend democratic rights to the decisions made in their board rooms and executive suites. Public proponents no doubt agree with this concern. On the other hand, given the purpose section of the EA Act (i.e. "betterment of the people of Ontario"), it has been recognized that a proponent's corporate interests must be weighed against broader public interest considerations during the EA planning and decision-making process.

In any event, there appears to be overwhelming consensus among EA stakeholders that the MOE must develop appropriate policy and guidelines to ensure meaningful public participation in the EA planning and decision-making process. For example, the attached Report of the Waste Table recommends that the MOE develop, with stakeholder input, "clear guidelines for the type, form and level of public participation, emphasizing a range of approaches" (Recommendation 6).

Similarly, the attached Report of the Energy Table calls for "better public engagement and consultation", and suggests that "the scale and extent of public participation and consultation should reflect the scale and extent of potential impacts and the level of public interest in a project" (pages 5 and 16). Among other things, the Energy Table has recommended greater disclosure of EA documentation, improved use of current information technology, and the creation of a "process co-ordinator" to enhance public consultation and to promote public understanding of the EA process.

Likewise, the attached Report of the Transportation Table recommends that: (a) MOE should define minimum public participation thresholds for individual EAs based on local community needs and project complexity; (b) MOE should develop "practice guidelines" that "encourage proponents to consult as early as possible in the EA process and give direction on how to be responsive to changes in the process as they evolve"; (c) MOE should prepare and distribute a "best practices" document on effective public consultation; and (d) EA notices and reports should be "published in a jargon-free, plain language" (Recommendations 10.1 to 10.4).

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[43] CEAA, section 4(1)(b.3) and 16.2 (as amended by Bill C-9 in 2003).

Public input received by the Executive Group also supported the need to substantially improve public consultation within Ontario's EA program. For example, a submission commented as follows:

> [Public consultation] is in need of a total overhaul so there is true participatory planning and, therefore, a balance of power between the proponent and public stakeholders (and between stakeholders themselves). If this is to happen, the process must be proactive, provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.

The Executive Group fully endorses these kinds of recommendations, and strongly urges the MOE to develop and implement long-overdue policy and guidelines to ensure meaningful public participation in the EA planning and decision-making process for all sectors subject to the EA Act.[44]

In this regard, the Executive Group notes that the MOE has already prepared a draft consultation guideline that has not been finalized to date. Accordingly, the Executive Group recommends that the MOE should revise the draft guideline in accordance with the findings and recommendations of this report. The revised guideline should then be posted on the EBR Registry for public notice and comment before it is finalized.

Once the guideline is finalized, the Executive Group recommends that the MOE should organize workshops and other public outreach measures so that all EA participants are fully cognizant of public participation rights and responsibilities under the EA Act. The elements of appropriate public consultation programs should also be a topic for the EA training and educational materials recommended below.

(b) Participant Resources

Public consultation is not a new requirement in EA, although it gained prominence in the 1996 amendments to the EA Act. Prior to 1996, a program for funding public participation in EA hearings had been available under the *Intervenor Funding Project Act* ("IFPA"), which was introduced by former Attorney General Ian Scott in 1988.[45]

Under the IFPA, proponents – not the Ontario government at large – were generally required to provide funding to eligible public interest participants for specified hearing-related purposes. Issues related to eligibility, quantum, and purpose of allocated funding were decided by the EA Board (now the ERT), and conditions were typically imposed to ensure that intervenors were accountable for expended funds. It should be noted that the IFPA was only applicable to individual EAs, rather than projects proposed under the auspices of Class EAs.

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[44] Article 3.2 of the Aarhus Convention of UNECE provides that governments will "assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters": source - "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus Denmark, 1998).

[45] The recitals to the Aarhus Convention (UNECE) recognize that citizens "may need assistance in order to exercise their rights" to access to information, participation in decision-making and "access to justice in environmental matters": source - "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus Denmark, 1998).

Despite general public and proponent support for the IFPA program, the previous Ontario government allowed the IFPA to expire without renewal in 1996, just before the Bill 76 amendments to the EA Act came into force. The net result is that intervenor funding is no longer mandatory for hearings held under the EA Act or the *Consolidated Hearings Act* where applicable. It should be further noted that during its lifetime, the IFPA was never extended to any part of the EA process which did not involve, or was prior to, public hearings. The IFPA has not been replaced by any program or process requirements since 1996, nor has the EAAB provided, promoted or advocated funding in any EA files which it supervises.

The need for, and benefits of, funding public participation in the EA process is well documented in studies, reports and published literature.[46] The high degree of technical, engineering and scientific investigation and analysis involved in EA work requires considerable professional assistance for participants, just as it does for proponents. Numerous disciplines and fields of inquiry are often involved in any particular EA study (e.g. hydrogeology, acoustics, toxicology, planning, etc.). The cost of obtaining competent professional assistance of this nature is very considerable, easily outstripping the expense of legal advice.

Without the assistance of expert advisors, public participation is likely to be of amateur quality and technically superficial, and therefore of little consequence in the EA planning and decision-making process. Such input is dismissed by decision-makers who prefer to rely on the technical opinions and advice of MOE staff and/or consultants employed by proponents. For example, the quality of interventions in hearings after the abolition of the IFPA was sharply reduced, if not entirely eroded.

Some public and private proponents were reluctant to fund participants who were often perceived to be critical of, and opposed to, the proposed undertaking as well as the EA process being followed by the proponent's consultants. Proponents were also concerned that the cost of the funding process, and the quantum of funding awards, were too high. They also were concerned that intervenor funding served to fuel lengthy hearings. Participants were also critical of the IFPA program, and were particularly concerned about artificial limits on the scope and amount of funding, eligibility limits on intervenors, and the lack of availability of funding for work done outside of (or before) the hearing process.

Despite such concerns, an independent study of the IFPA commissioned by three provincial Ministries (i.e. Attorney General, Energy, and Environment) found that intervenor funding was both effective and necessary to facilitate informed public participation.[47] To address concerns about the implementation of the IFPA, this study offered a number of suggested improvements to the IFPA. The EA Board, EAAC and other interested stakeholders also offered similar recommendations for funding reform. As noted above, however, the IFPA was abolished – not reformed – in 1996, and no alternative funding regimes have been developed to date.

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[46] See, for example, R. Anand and I.Scott, "Financing Public Participation in Environmental Decision-Making" (1982), 60 Can. Bar Rev. 81, and Canadian Environmental Defence Fund, *Intervenor Funding and the Intervenor Funding Project Act in Ontario* (CEDF, 1991).

[47] W. Bogart and M. Valiante, *Access and Impact: An Evaluation of the Intervenor Funding Project Act* (1992).

The current absence of participant and/or intervenor funding leaves Ontario at the trailing edge of EA regimes across Canada. For example, the *Canadian Environmental Assessment Act* (CEAA) specifically mandates the establishment of a participant funding program to facilitate public participation in comprehensive studies, mediations and panel reviews under the Act: see section 58(1.1) of CEAA. Similarly, Manitoba's EA legislation empowers the Minister to require proponents to provide financial or other assistance to persons or groups involved in the EA process: see section 13.2 of the *Environment Act* and the "Participant Assistance Regulation" (Reg. 125/91). Clearly, it is time for Ontario to revisit the critically important issue of funding public participation in EA planning and decision-making.

In this regard, it should be noted that the attached Report of the Waste Table expresses concern that the absence of MOE policy direction on funding leaves "the determination of the need for participant funding to the discretion of proponents" (page 12 Moreover, the Waste Table identified the need for the MOE to "define when it would be appropriate for proponents to provide financial assistance to participants", and recommended that every TOR should "include an outline of how the proponent will assist the public in participating in the process" (Recommendation 6). This recommendation further states that the level of participant funding "would be commensurate with the size and nature of the project". The Executive Group concurs with these recommendations, but suggests that they should not be confined to the waste sector. Instead, an appropriate model for funding public participation should be developed for the EA program at large.

There are different options and issues that should be considered for ensuring the timely provision of resources to facilitate public involvement in the EA planning and decision-making process. For example, a private waste management proponent made a submission to the Executive Group indicating that proponents should provide funding to community-based liaison committees (rather than to individual citizens), which could use the funding to retain qualified consultants in various disciplines to undertake peer reviews of proponents' technical work. Another submission received from the public by the Executive Group recommended that: (a) the funding program should be entrenched in rules rather than guidelines; (b) that the quantum of resources provided by proponents should be proportional to the size, scale and significance of the proposed undertaking; and (c) that resources should be made available directly to citizens' groups or local communities (rather than just municipal councils). The Executive Group also received public input suggesting that interested or affected individuals should be eligible to apply for participant or intervenor funding from proponents. Another submission from the public urged caution when applying the "proponent pay" principle in the renewable energy sector, since the proponents of such projects tend to be small, community-based or non-profit groups that may be ill-equipped to provide resources to all interested or potentially affected participants.

In light of the foregoing comments, the Executive Group concludes that there is a strong level of conceptual support for funding public participation in the EA process, but there is no unanimity at this time about the details on how to best construct an effective, efficient and equitable funding model.

In carrying out its mandate, the Executive Group had insufficient time to fully develop and consult upon a new funding model for Ontario that strikes an appropriate balance between the needs of proponents and other EA participants. Accordingly, the Executive Group suggests that the Minister should refer the issue of funding public participation to the provincial advisory body (see Recommendation 6 above) for its consideration and further consultation. Ideally, this public review should proceed in conjunction with the finalization of the consultation guideline, as described above. In particular, the provincial advisory body should be requested by the Minister to develop an appropriate participant funding model for Ontario that addresses concerns which had been expressed by proponents and participants about the previous IFPA regime. In addition, the model should ensure that sufficient resources are made available for public participation early in the EA planning and decision-making process. In general terms, the amount of funding should be commensurate with the significance (or categorization) of the proposed undertaking or project.

(c) Siting Exercises and "Willing Host" Communities

Siting of fixed and linear projects is often challenging under the EA Act, especially since very local impacts upon neighbours are often unavoidable, reducing land values and quality of life, and prompting staunch objections to the proposed undertaking, regardless of proposed mitigation measures or the creation of local, regional or provincial benefits arising from the project. Problems inherent in siting unpopular facilities like landfills have led to the development of processes aimed at identifying eager, or at least "willing", hosts for these projects, with very explicit attendant local benefits defined at the outset.

The still rather sparse experience with willing host procedures is not encouraging, and indicates that much more work and experimentation is required before this process is likely to succeed. Problems have included the proper definition (or gauge) of community consent: does it refer to the views of elected officials rather than the community at large? Does it refer to one portion of the community rather than all groups in the area (particularly those downwind, downstream or downgradient of a proposed facility)? Should formal plebiscites or referenda be undertaken to determine local acceptance?

It should be further noted that diversity of opinion regarding proposed projects is common, and it is critical that the reluctant or opposing community members be included or at least targeted by any willing host process. Moreover, since communities are reluctant to accept long-term arrangements, time-limited agreements should be considered with provisions for review and revision. Furthermore, an inclusive forum for community representatives with sufficient resourcing to ensure a stable existence, beyond the current elected council, is essential for negotiation of any agreement and monitoring of conditions.

On this point, it should noted that the attached Report of the Waste Table stipulated that the EA process must be "socially responsible" in the sense that waste management proponents should be "responsive to the needs of the community, listen to their concerns, and act accordingly" (Recommendation 1, paragraph 5).

Thus, the Executive Group recommends that the Minister should request the provincial advisory body to review and report upon appropriate models for obtaining or confirming community acceptance to undertakings proposed under individual EAs and Class EAs.

ISSUE: GREEN PROJECT FACILITATOR

The Energy Table and other EA stakeholders supported a broad objective characterized as "one project, one process" to promote the review, assessment and approval of projects through a single process by integrating administrative functions of multiple review and approval authorities, clarifying criteria and accountability for decision-making, and eliminating redundant and unnecessary steps and processes. Given the Advisory Panel's mandate, the Executive Group determined that this suggestion would be especially valuable for the facilitation of "green projects" in Ontario (e.g., projects that maximize benefits to the people of Ontario and minimize negative impacts).

RECOMMENDATION 12: GREEN PROJECT FACILITATOR

The Ontario government should create the office of a provincial process facilitator for green projects. This office will facilitate approval of green projects by: (1) expediting EA and other provincial requirements; and (2) resolving cross-jurisdictional or interministerial issues.

DISCUSSION:

The Executive Group considered a range of options to facilitate the EA process. At one end of the continuum is the option of maintaining the status quo – that existing authority in legislation is essentially left untouched, but provincial officials are given the resources and direction to oversee the EA planning and decision-making process. In other words, Ministries and agencies of the Crown could retain their entire existing jurisdiction, while local decision-making under legislation, such as the *Planning Act*, would continue.

On the other end of the spectrum, the Executive Group discussed fundamentally changing the roles, responsibilities and statutory powers of all authorities responsible for the approval and development of energy projects, for example, thereby creating an entirely new structure. After considerable discussion, the Executive Group did not feel that either one of the extreme ends of this continuum would satisfy the goal of improving the EA process.

Rather, the Executive Group decided that the most effective strategy would be the creation of a process facilitator at the provincial level. The office of the process facilitator would be responsible for ensuring an integrated and coordinated review, and for ensuring the EA process solicits and accommodates public participation. The focus of the office would be to facilitate "green projects", as identified and prioritized in the sector-specific policies described above. Essential to the success of the process facilitator would be the authority to help resolve conflicts on matters of provincial interest. Of necessity, the facilitator would have to be a senior or high-level bureaucrat who could be established with an interministerial mandate under the auspices of the Premier's Office rather than the Minister of the Environment.

Precedents for this approach exist at both the provincial and federal levels. For example, the Ontario government had previously established the Office of the Provincial Facilitator (Dale Martin), which resolved inter-agency or public disputes regarding significant land use or development proposals that triggered multiple approval requirements. Similarly, at the federal level, CEAA has been recently amended to establish the "Federal Environmental Assessment Coordinator" whose mandate is to "coordinate the participation of federal authorities" in the EA process, "facilitate communication and cooperation" among federal authorities, provincial governments, and other EA participants, and ensure that federal authorities perform their obligations "in a timely manner": see sections 12.1 and 12.2 of CEAA.

If a similar office is established in Ontario, successful implementation would require participation by responsible authorities at the provincial and municipal levels. Each authority would produce a checklist detailing the review and approval process, and establishing the standards and requirements to be met. Public expectations, industry compliance, corporate due diligence and public fiduciary obligations would then be met and discharged in one, single process.

ISSUE: HEARINGS, ALTERNATIVE DISPUTE RESOLUTION (ADR) AND MEDIATION

Under Ontario's current EA program, there are separate decision-making roles being performed by the Minister, EAAB and Environmental Review Tribunal ("ERT"). The EAAB also is the administrator and coordinator of the EA program. For many years, the Environmental Assessment Advisory Committee provided external advice to the Minister on contentious EA disputes, but EAAC no longer exists. In addition, there is no ADR department, nor personnel, within MOE or EAAB who are actively facilitating ADR in EA matters.

Sections 9.1 and 9.2 of the EA Act empower the Minister to refer an application, in whole or in part, to the ERT for a public hearing and decision. This discretion may be exercised by the Minister on her own initiative, or upon the request of any person (see section 9.3 of the EA Act). Where the Minister refers a matter to the ERT, the Minister is further empowered to impose directions, conditions and deadlines regarding the ERT hearing and decision. Similar provisions apply to Class EAs under Part II.1 of the EA Act. With two exceptions, however, there have been no public hearings held under the EA Act since these statutory provisions were enacted under Bill 76 in 1996. The ERT's rules of practice encourage pre-hearing mediation and other ADR techniques to identify, scope, or settle issues in dispute.

RECOMMENDATION 13: HEARINGS, ADR, MEDIATION

The MOE should revise the draft mediation guideline and should specifically request consider circumstances or criteria when it may be appropriate for the Minister to refer matters to ADR and mediation under the EA Act. One recommended issue to consider is the role of ADR when there is continuing public concern about a project. A one-day mandatory mediation could be considered for use at the end of contentious phases of an EA

project before the proponent advances to the next stage or any public right of review (e.g., Part II Order or elevation request) can be exercised. Following the revision the MOE should consult widely on the guideline before finalizing.

RECOMMENDATION 14: HEARINGS, ADR, MEDIATION

Pending the completion of the sectoral procedural framework, as an interim measure the Minister should ensure that there are public hearings before the ERT on individual EA applications where:

a) ADR and mediation efforts have been employed; and,

b) there is significant unresolved public controversy about substantive and procedural issues arising from the proposed undertaking.

DISCUSSION:

The Executive Group firmly believes that ADR and mediation efforts – and fair, timely and efficient hearings – can both play important roles under Ontario's EA program.

(a) ADR and Mediation

ADR is a process which can utilize numerous different approaches to reduce or eliminate disputes and conflicts, and be engaged at any stage in the EA process, including individual and Class EA undertakings (i.e. bump-up or elevation requests). ADR is used widely in a variety of legal contexts beyond the EA Act. For example, mediation is commonplace in the civil and family court process, and in proceedings before administrative tribunals. Although voluntary (party-directed) mediation is preferred, mandatory mediation is also in use. Mandatory mediation has been in place since at least 1999 in Superior Court of Justice proceedings in Toronto and Ottawa, pursuant to the Ontario Mandatory Mediation Program. These mediations are required during the first few months of a lawsuit, although the court may extend the time limit where appropriate.

This process is now under review, and allowing mediations to occur closer to the stage of trial scheduling, if the parties prefer it, is now permitted. The practical reason for this change is that many lawsuits are settled through negotiation only when the day of reckoning (i.e. the trial) is drawing near. At that point, avoidance and delay are no longer options if settlement is to occur. Decision and/or hearing deadlines cause pressure to mount, and this in turn can motivate parties to come to the table, however reluctantly, and negotiate in earnest.

EA often involves difficult multi-party disputes involving numerous issues and public interest values. Resolution of these complex disputes generally requires more time and effort then does private two-party disputes. Facilitating negotiations among parties early in the process, and whenever else disputes arise, is generally a very constructive step. But in the shadow of administrative decision-making, hearings or litigation, it is practically a necessity.

Given the benefits of ADR, the Executive Group believes that EA disputes should be referred to mediation whenever possible or appropriate. In fact, the Minister is empowered to refer various

EA matters (i.e. Terms of Reference, EA approval, or "bump-up" requests (Part II orders)) to a mediator (see sections 6(5), 8, and 16(6) of the EA Act). It appears, however, that this Ministerial authority has not been invoked to date. The general lack of formal mediation efforts under the EA Act may be attributable, at least in part, to the lack of MOE policy or guidance documents concerning mediation.

Accordingly, the Executive Group recommends that ADR should be utilized extensively throughout the EA program, particularly with appropriate staging and deadlines. The Minister and EAAB should take a leadership role in developing a culture and programs which encourage its use.

Similarly, the Executive Group recommends that the MOE should revise its draft mediation guideline in accordance with the findings and recommendations in this report. The revised guideline should then be posted on the EBR Registry for public notice and comment before it is finalized. In finalizing the guideline, particular attention should be given to specifying circumstances or criteria when it may be appropriate for the Minister to refer matters to ADR and mediation under the EA Act.

(b) Hearings

If the public consultation reforms recommended by the Executive Group are implemented, and if EA disputes are referred to mediation more frequently, then hearings become the tool of "last resort" under the EA Act. Put another way, if members of the public are properly consulted, and if their concerns are duly accommodated by proponents (with or without mediation), then the likelihood of hearing requests being filed at the end of the EA process is substantially diminished. On the other hand, if inadequate consultation has occurred, or if ADR or mediation has not resolved public concern about the proposed undertaking, then the Minister should not be reluctant to send the matter, in whole or in part, to a public hearing before the ERT, as described below.

Public hearings under the EA Act are important mechanisms for gathering information, testing evidence, weighing competing interests, and making informed decisions about particularly significant or controversial undertakings.[48] Since the EA Act came into force, public hearings have been held on a wide variety of high-profile undertakings, including landfills, incinerators, highways, transmission lines and timber management on Crown lands. More often than not, these EA hearings have resulted in approval of the proposed undertakings, subject to terms and conditions that are intended to prevent, mitigate and monitor the environmental effects associated with the proposals.

As a specialized tribunal with origins dating back almost 30 years, the ERT is required by law to conduct hearings in a procedurally fair manner. To ensure the independence and institutional expertise of the ERT, it is necessary for the Ontario Cabinet to appoint ERT members who are knowledgeable, experienced, and free of perceived or actual conflicts of interest. In addition, the ERT should be adequately resourced so that members can receive ongoing professional training and development, and hearing panels can appoint their own experts, if required, in order to assist in the ERT's adjudicative duties. The cost of delivering such hearing-related services could be recovered, at least in part, by prescribing appropriate application fees under the EA Act (i.e. filing fees at the ERT for matters referred to a public hearing – see Recommendation 24), as are currently prescribed for other ERT hearings.

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[48] Article 9 ("Access to Justice") of the Aarhus Convention of UNECE provides in 9.2(b) that members of the public shall "have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission"; source - "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters" (Aarhus Denmark, 1998).

In recent years, the ERT has developed rules of practice that include provisions aimed at identifying, narrowing and resolving issues in dispute through mediation and other pre-hearing and hearing procedures. Thus, positive steps have been taken to address historic concerns raised by proponents and others about the cost, complexity and duration of EA hearings.

Despite having the power under the revised EA Act to impose hearing deadlines and circumscribe hearing issues, since 1996 only two undertakings have been referred by the Minister to public hearings under the EA Act. The first was the Adams Mine Landfill hearing, in which the Minister referred only a single issue (i.e. the "hydraulic trap" design), imposed a relatively short deadline for the decision, and approved all other aspects of the application without a hearing. The second was the Quinte Landfill case, in which the Minister referred the entire application for a hearing. Given the continuing absence of MOE policy or guidance documents regarding hearing referrals or decision deadlines, it is difficult to understand why one landfill application triggered a "scoped" hearing, one triggered a "full" hearing, but countless other landfill applications have been approved without any hearings whatsoever under the EA Act.

In fact, aside from these two cases, virtually all other individual EA approval decisions under the EA Act have been made by the Minister without the benefit of public hearings. In addition, it appears that EA hearing requests from the public are being routinely refused by the Minister despite concerns about the adequacy of the proponent's EA work or the acceptability of the proposed undertaking. Indeed, given that the EA Act was specifically amended in 1996 to allow the Minister to, in effect, "tailor" the hearing to fit the undertaking, it is unclear why the Minister has consistently refused to refer matters to ERT hearings at all.

The ongoing absence of hearings under the EA Act is both ironic and perplexing when compared to hearing opportunities under other Ontario statutes. Under the *Planning Act*, for example, appeals to the Ontario Municipal Board are available to the public as of right, even in relation to relatively minor zoning and planning disputes. On the other hand, public hearings are currently non-existent under the EA Act, despite the profound ecological and socio-economic impacts of the type of large-scale undertakings subject to the EA Act.

More fundamentally, the lack of EA hearings appears to be inconsistent with the language of the EA Act, which provides that upon the request of any person, the Minister "shall" refer the EA application, in whole or in part, to ERT, unless the Minister opines that the request is "frivolous or vexatious", or that a hearing is "unnecessary" or may cause "undue delay" (see section 9.3 of the EA Act). However, there appear to be no explicit MOE criteria in the public domain that clearly explain how these vague grounds are to be interpreted or applied in refusing hearing requests. Unless and until this ambiguity is resolved, the public and proponents alike will have little or no certainty as to when an EA hearing may be ordered, and there will be little or no accountability for Ministerial refusals to grant the hearing rights entrenched in the EA Act.

This overwhelming "no EA hearing" trend is particularly significant since the MOE passed regulations in 1997 stipulating that where waste disposal sites, waste management systems or sewage works are approved (or exempted) under the EA Act, then there will not be any public hearings that are otherwise mandatory under the *Environmental Protection Act* or *Ontario Water Resources Act* (see O.Regs. 206/97 and 207/97). Members of the public and the Environmental Commissioner of Ontario have also expressed concern about the "EA exception" under section 32 of the *Environmental Bill of Rights* ("EBR"), which provides that "instruments" (i.e. licences, permits or approvals) that implement an undertaking approved (or exempted) under the EA Act are not subject to the mandatory public notice, comment and third-party appeal provisions of Part II of the EBR.

Thus, the combined effect of the "no EA hearing" trend, the 1997 regulations, and the "EA exception" under the EBR means that the critically important details regarding design and operation of an undertaking escape meaningful scrutiny by the public and the ERT. As noted above, the Executive Group feels that the EAAB is in a position to encourage and facilitate ADR for stakeholders and proponents, but does not do so. The absence of institutionalized efforts to resolve disputes is surprising in view of the fact that the threat of impending decisions by the Minister, including the option of referral to a hearing, creates a strategic opportunity for facilitating serious negotiations among parties.

However, it must be noted that merely referring matters more frequently to the ERT for public hearings does not resolve concerns raised by participants about the lack of intervenor funding. The pioneering *Intervenor Funding Project Act* was allowed to lapse without renewal in 1996 despite receiving consensus support for its continuation. In the absence of any current legislation requiring the provision of intervenor funding to eligible parties, there is continuing concern about the ability of the public to participate in a meaningful manner in ERT hearings under the EA Act.

Some EA stakeholders have suggested that if the Minister made judicious use of the EA Act powers to scope hearings and impose decision deadlines, then proponents would obtain the certainty of time-limited and issue-focused hearings. Thus, anecdotal concerns about hearing length and complexity under the "old" EA Act would no longer be relevant. However, the *quid pro quo* for hearing restrictions under the current EA regime should be the mandatory provision of intervenor funding to eligible parties. This would be particularly true if the ERT was legally required to allocate to every hearing party, including the proponent, equal amounts of time to present their respective cases, unless the parties agreed otherwise. For example, if the proponent (and its supporters) requires 5 days to make its case, then opposing intervenors should receive 5 days (and intervenor funding) to make their case.

As noted above, the Executive Group sees merit in the development of a procedural framework which automatically specifies which matters may – or may not – go to a public hearing (see Recommendation 5). However, pending the development of such a framework, the Executive

Group recommends that as an interim measure, the Minister should ensure that there are public hearings before the ERT on individual EA applications where:

a) ADR and mediation efforts have been employed; and
b) there is significant unresolved public controversy about substantive and procedural issues arising from the proposed undertaking.

The Executive Group suggests that there are various options to achieve this objective (i.e. legislative amendment, hearings regulation, policy development), but we have no particular preference as to which option is employed by the Minister. The overall intent of this recommendation is to ensure that EA hearings are again available in Ontario – not necessarily in every case, but only in appropriate cases (i.e. where there are unresolved public concerns regarding the environmental risks posed by a proposed undertaking). In this regard, the Executive Group believes that it is time to move the pendulum back from "no EA hearings" to "some EA hearings". In our view, the public interest benefits of EA hearings (or at least the realistic possibility of EA hearings) far outweigh the potential resource implications. After all, given the profound environmental significance of undertakings that are subject to individual EAs, it is critical to ensure that unresolved controversy or conflicts are adjudicated in an independent, credible and publicly accessible forum.

ISSUE: INTEGRATION

Undertakings subject to the EA Act frequently require approvals under other planning or regulatory statutes. Proponents sometimes apply for these other approvals concurrently with the EA process, and sometimes these approvals are sought subsequent to the completion of the EA process. In either case, proponents have reported that considerable delay may be encountered in obtaining these other approvals from other regulatory agencies. There is also proponent and public concern about inadequate integration of the EA process with other planning or regulatory statutes. For undertakings that potentially affect areas of federal interest, there is also uncertainty over the relationship between Ontario's EA Act and the *Canadian Environmental Assessment Act* (CEAA). EA participants are also concerned that if proponents apply first for EA Act approval, then critical design and operational details may be deferred to other approvals regimes with fewer (or non-existent) opportunities for meaningful public scrutiny.

RECOMMENDATION 15: INTEGRATION

The Minister should, as soon as reasonably possible, ensure the EA Act:

a) adopts by cross-reference the *Provincial Policy Statement* ("PPS") that is issued by Cabinet under section 3 of the *Planning Act*;
b) specifies that all statutory decisions under the EA Act shall be consistent with the PPS, as may be amended from time to time; and
c) provides that, in cases of conflict between the PPS and EA policies, the latter shall prevail.

RECOMMENDATION 16: INTEGRATION

The MOE should develop, with proponent and EA participant input, clear and concise guidelines that explain when and how the EA Act will be harmonized with CEAA in relation to undertakings that are potentially subject to both statutes.

RECOMMENDATION 17: INTEGRATION

The MOE should amend the general "EA exception" in section 32 of the *Environmental Bill of Rights* ("EBR") to ensure that:

a) public notice is provided under the EBR in relation to prescribed instruments that are proposed to implement environmentally significant projects or undertakings which have been approved or exempted under the EA Act; and

b) residents may seek leave to appeal such instruments under the EBR only where the environmentally significant project or undertaking has been approved or exempted under the EA Act without a public hearing.

DISCUSSION:

Integration with Other Statutes

Public and private undertakings that are subject to the EA Act may require various other licences, permits, or certificates of approval under other statutes before the undertaking can be constructed or established. For example, a proposed landfill or incinerator typically requires approvals under other statutes administered by the MOE (i.e. *Environmental Protection Act*, and *Ontario Water Resources Act*), but may also need rezoning or official plan amendments pursuant to the *Planning Act* as well as other statutory approvals.

Similarly, Appendix II of the Report of the Energy Table describes the diverse range of federal and provincial licences, permits and approvals that may be required for energy projects, depending on the nature and location of the proposal. Aside from the EA Act (or O.Reg.116/01 and related Class EAs), these other statutes include: *Canadian Environmental Assessment Act; Fisheries Act; Navigable Waters Protection Act; National Energy Board Act; Environmental Protection Act; Ontario Water Resources Act; Lakes and Rivers Improvement Act; Public Lands Act; Conservation Authorities Act; Ontario Heritage Act; Drainage Act; Provincial Highways Act; Planning Act;* and *Ontario Energy Board Act*. Similarly, a participant at the Energy Sector workshop commented that "under the current process with sequential EA and OEB [Ontario Energy Board] approvals, there is the potential for conflicting decisions on what is acceptable and who should pay". To remedy such situations, this participant suggested greater usage of joint EA and OEB review where necessary. Another submission received by the Executive Group from an energy proponent commented that the "provincial permitting process needs to be streamlined and linked to the EA approvals people and procedures/process."

The need for better integration also arises with respect to transportation projects planned under Class EA procedures, which frequently intersect the *Planning Act* regime. The Report of the Transportation Table also expresses concern over the apparent lack of integration between community transportation master planning and the EA process (pages 19 to 20). This Table further notes the differential treatment between transit stations on commercially zoned properties (which simply require rezoning and/or site plan approval under the *Planning Act*) and municipal transit stations (which are subject to the EA Act), even though both types of transit facilities may be virtually identical (page 21).

The Executive Group also received public input that highlighted the need to improve the integration of the EA program with other approvals regimes. For example, a submission received from a member of the public urged the Ontario government to "look for efficiencies in dealing with decisions/appeals required under multiple Acts/regulations, provided that the requirement for local government approval continues to be respected where required." As noted by another commentator, "there can be a disconnect between the EA process and the approvals process within the MOE," and "improvements in communications and coordination between the EA Section and Approvals Section staff would help facilitate an efficient conclusion to the two processes." Similarly, another submission from the public supported a more "transparent" integration between the EA process and the *Planning Act*, and suggested that there were a number of other statutes or regulations that should be better integrated with the EA process (e.g. *Development Charges Act*, *Municipal Act*, *Public Transportation and Highway Improvement Act*, and O.Reg.239/02). Similarly, another submission recommended "a one window approach to the approval process whereby approvals required under the *Planning Act*, the *Ontario Energy Board Act*, the *EA Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act* and other legislation are administered and coordinated by one government contact point that is aware of the status of each approval and ensures there is no overlap or duplication and a consistent schedule is maintained."

In light of the regulatory complexity described above, the Executive Group recommends that the Ontario government should develop appropriate regulatory and administrative tools to improve the integration of the EA Act with other relevant statutes. For example, this report recommends certain revisions to the *Consolidated Hearings Act* regime to better coordinate hearings that may be triggered by undertakings requiring EA Act approvals and other prescribed licences or permits. Similarly, this report recommends that the Ontario government should create an inter-ministerial "green project facilitator", who would liaise with EAAB and other public authorities in order to resolve delays or difficulties in processing multi-jurisdictional applications for such projects, as described above. In this regard, the Executive Group notes that there are recent precedents for the establishment of provincial facilitators or coordinators to assist in the approval and implementation of projects deemed to be in the public interest at the local, regional or provincial scale (i.e. former Office of the Provincial Facilitator, Dale Martin).

However, while the foregoing recommendations would improve administrative efficiency for certain projects, they do not necessarily result in better integration of the EA Act and the *Planning Act*. The need for enhanced coordination between EA planning and municipal land use planning has been well-recognized over the past decade,[49] but has not been adequately addressed to date. This is unfortunate because a comprehensive approach is needed to ensure that planning and decision-making processes ultimately lead to long-term societal benefits, such as building strong, livable communities, protecting environmental resources, and supporting a sustainable economy.

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[49] See, for example, EAAC, *Report No. 38: The Adequacy of the Existing Environmental Planning and Approvals Process* (November 1989); and Commission on Planning and Development Reform in Ontario, *New Planning for Ontario* (June 1993).

The need to better integrate the EA program and the *Planning Act* was highlighted in a number of submissions received by the Executive Group from the public. For example, one commentator recommended that "the Ontario government [should] ensure better integration of planning and environmental decisions so that sustainable communities can be developed". This commentator succinctly noted as follows:

> The apparent disconnect between the land use planning decisions made under the *Planning Act* and decisions on projects and undertakings under the *Environmental Assessment Act*, creates the serious problem of piecemealing municipal decision-making on the related matters. Municipal, or provincial, approval of a new subdivision results in demand for new roads, transit, waste, energy, water and sewage infrastructure and other services to match the needs of the new residents. Carrying out any of these subsequent municipal government actions will trigger the EA Act either as individual or Class EA projects. When the EAs are carried out, proponents (often the municipality that made the land use decisions) claim that they have no alternatives but to build the new road or install new infrastructure – the classic model of piecemealing.

In the view of the Executive Group, an excellent starting point towards better integration is for the Minister to make a regulation or policy guideline under the EA Act (i.e. see sections 27.1 or 42) that adopts by cross-reference the Provincial Policy Statement (PPS) issued by Cabinet under section 3 of the *Planning Act*. Furthermore, the Executive Group recommends that the regulation or guideline should require all decision-makers under the EA Act (i.e. Minister, Director, and ERT) to ensure that their decisions are consistent with the PPS.

The primary rationale for this recommendation is that the PPS not only provides a greater level of planning detail than the general EA principles articulated above in this report, but the PPS also addresses a larger range of key environmental matters (i.e. urban growth management, brownfields redevelopment, transit-supportive land use patterns, greenspace preservation, protection of air and water quality, etc.) that should be specifically integrated into the EA process.

Moreover, by adopting and applying the PPS under the auspices of the EA Act, critical upfront direction will be provided to proponents and the public alike as to the likely acceptability of proposed projects. In short, projects that are consistent with PPS policies are more likely to be approved, and projects that are inconsistent with PPS policies are more likely to be rejected. Thus, PPS policies (and related implementation manuals) should assist considerably in siting exercises, and the consideration of alternatives, under the EA Act.

It is conceivable that the sector-specific policies, once finalized by the representative working groups recommended by this Report, could be used to supplement the PPS policies (or could result in consequential amendments to the PPS) in respect of these sectors. However, the Executive Group sees no compelling reason why the adoption of PPS under the EA Act should await the finalization of sector-specific policies. In our view, the Minister should adopt the PPS policies as soon as reasonably possible as the first modest step in better integrating the EA Act and *Planning Act*.

The Executive Group further concludes that there is a similar need to better integrate the EA Act with land use planning initiatives on Crown lands where, because of limits on the *Planning Act*, the PPS does not apply. However, due to time constraints, we were unable to fully evaluate potential mechanisms to achieve such integration regarding Crown lands and resources, and suggest that this matter should receive further consideration and consultation after the release of this Report.

Integration with CEAA

In addition to requiring approvals under the EA Act and other provincial legislation, some undertakings may trigger the application of CEAA (i.e. where federal lands are to be acquired or used; where federal financial assistance is to be provided; or where a prescribed federal license, permit or approval is required to proceed with the undertaking).

To facilitate this inter-jurisdictional coordination, Ontario and the Government of Canada have recently finalized a federal-provincial agreement that sets out a cooperative framework for notification, consultation and communication procedures that should be followed by EA staff in relation to undertakings subject to the EA Act and CEAA.[50]

1996 amendments to the EA Act make provision under section 3.1 to "harmonize" the Ontario EA and CEAA processes by empowering the Minister to vary or dispense with provincial EA requirements "in order to facilitate the effective operation of the requirements of both jurisdictions." It is anticipated that by avoiding separate EA reviews under provincial and federal law, more timely and efficient EA planning and decision-making can take place, which will benefit proponents, participants and both levels of government. Similarly, section 54(1) of the CEAA makes provision to use the Ontario EA process in place of the CEAA regarding certain kinds of funding agreements and arrangements.

Notwithstanding such statutory provisions and ministerial agreements, however, several EA stakeholders have commented upon the continuing lack of clarity regarding joint assessments under the EA Act and CEAA. For example, a submission received by the Executive Group from an energy proponent indicated "support [for] harmonization with the federal EA process to ensure that projects are not subject to multiple EAs." Similarly, the Report of the Energy Table states that:

> Although coordination procedures have been established by the CEA Agency and the Ministry of the Environment to facilitate a single EA and review process for a proposed project involving both jurisdictions, there may still be considerable overlap in jurisdictional authority among different federal, provincial and municipal agencies (page 28).

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[50] *Canada-Ontario Agreement on Environmental Assessment Cooperation* (2004).

In addition to recognizing the Energy Table concern about "overlap in jurisdictional authority", the Executive Group expresses concern about the different process emphases of the Ontario EA and CEAA, particularly as concerns requirements to identify and evaluate "alternatives to" a project or undertaking and alternative "methods" or "means" of carrying out a project or undertaking. The Executive Group takes notice of the May 2004 "Advice to Proponents at the Terms of Reference Stage for a Coordinated Federal/Provincial EA Process" (CEA Agency May 2004) and, particularly, the Draft Figure 1 in this document regarding Federal/Provincial Coordination Process for Individual EAs/ Screenings. Recognizing that this "Advice" document is limited to projects subject to the Terms of Reference Stage, the Executive Group recommends that the MOE should develop, with proponent and participant input, clear and concise guidelines that explain when and how EA Act requirements will be "harmonized" with CEAA in respect of undertakings that are potentially subject to both statutes.

The EBR's "EA Exception" to Public Participation

Section 32 of the EBR currently provides that the public participation rights under Part II of the EBR do not apply in relation to instruments (i.e. licences, permits, certificates of approval, etc.) that are issued to implement projects or undertakings which have been approved (or exempted) under the EA Act. This so-called "EA exception" under the EBR means, among other things, that instruments issued for EA-approved (or exempted) projects or undertakings are not subject to: (a) public notice through EBR Registry postings; (b) mandatory public comment under the EBR; or (c) third-party appeal provisions under the EBR.

For example, a landfill proponent could seek approval "in principle" (i.e. at a conceptual level) under the EA Act, and given the recent track record, would likely obtain this approval without a public hearing under the EA Act. The detailed design and operational details could then be submitted to the EAAB Director as part of the proponent's application for a certificate of approval under Part V of the EPA. However, as noted elsewhere in this Report, O.Reg. 206/97 specifies that the proponent's EPA application is not subject to a public hearing. Moreover, section 32 of the EBR prevents the EPA application from becoming subject to mandatory public notice or comment requirements under the EBR. Similarly, section 32 of the EBR prevents the public from seeking leave to appeal the EPA instrument to the Environmental Review Tribunal.

Thus, under the current regulatory regime, it is entirely possible to obtain approval to proceed without public hearings under the EA Act or EPA, and without public notice/comment opportunities prescribed under the EBR, due to section 32. This situation was sharply criticized in the most recent annual report by the Environmental Commissioner of Ontario:

> Section 32 was initially intended to avoid duplicating public consultation process since the EAA, at least in theory, has similar public consultation requirements. However, in our 2001/2002 annual report, the ECO evaluated public participation rights under several environmental assessment processes and concluded that they are deficient in many respects compared to the EBR process for instrument approvals.
>
> These deficiencies mean that the existing broad application is depriving the public of rights to comment on and request appeals of instruments – rights that the EBR is intended

> to safeguard… As a consequence of section 32, some environmentally significant decisions are receiving no public notification, and indeed, no public scrutiny at all.[51]

The ECO annual report goes on to discuss these and other concerns in the context of Class EAs (i.e. MEA, MTO and MNR) and individual EAs (i.e. Adams Mine Landfill).

The Executive Group concurs with the Environmental Commissioner's concerns that section 32 of the EBR is being used to "shield" important EA-related approvals from adequate public scrutiny, and that public participation rights are being frustrated as a result.

Accordingly, the Executive Group recommends that the MOE should amend section 32 of the EBR to ensure that the current "EA exception" to EBR public participation requirements does not undermine public scrutiny of instruments that implement projects or undertakings approved (or exempted) under the EA Act.

ISSUE: CLASS ENVIRONMENTAL ASSESSMENT

As of 2004, there were nine approved "parent Class EAs" for a very wide variety of both municipal and provincial undertakings. These cover municipal activities, GO Transit, provincial highways, provincial parks and conservation reserves, land held by the Ontario Realty Corporation, MNR resource stewardship and facility development projects, conservation authorities, and minor electrical transmission facilities. In addition, the Electricity Regulation (O.Reg. 116/01 and Guide) establishes what is, in effect, a Class EA process for both public and private sector electricity generation projects. As a result, 30 years after the EA Act took effect, the vast majority of undertakings considered under the EA Act are processed through a Class EA type process, with very few undertakings subject to an individual EA.

The parent Class EAs and the O.Reg.116/01 regime categorize projects according to potential environmental effects and levels of concern, and they require varying degrees of study and consultation for different categories, or "schedules", of projects. However, considerable controversy has arisen under the Class EAs and the Electricity Regulation as to when it is appropriate to bump-up, or elevate, a particular project so that an individual EA is prepared by the proponent. In particular, extensive concern has been expressed about who should decide such requests, what is the appropriate basis or criteria for deciding such requests, and what remedies should be available to concerned citizens once planning efforts have been commenced under Class EAs or the Electricity Regulation. The Energy Table recommended that an independent adjudicative body carry out this function. The Executive Group considers that the existing ERT meets these needs and should carry out this function.

RECOMMENDATION 18: CLASS ENVIRONMENTAL ASSESSMENT

As an interim measure while considering the recommended procedural reforms, the MOE should create an opportunity for the proponent and public, as well as the Minister, to make summary applications for interim directions (which could include mediation or rulings)

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[51] ECO, *Choosing Our Legacy: 2003-2004 Annual Report* (Oct. 2004), page 53.

from the Environmental Review Tribunal during the preparation of a project-specific Class EA/ESR or screening/review under Electricity Projects Regulation 116/01.

RECOMMENDATION 19: CLASS ENVIRONMENTAL ASSESSMENT

The government should create a formal adjudicative process, administered by the ERT, to expeditiously hear and decide applications for 'bump-ups' and elevation requests.

DISCUSSION:

(a) Resolving Issues During the Preparation of a Project-Specific Class EA/ESR/environmental screening

During the time that a parent Class EA is being applied to a project and an Environmental Study Report (ESR) is being prepared, where there are differences of opinion between the proponent and others as to the proper project schedule, the appropriate level of public consultation, or adequacy of studies required to comply with the parent Class EA, there is no meaningful procedure or mechanism for resolving such issues. Failing agreement between the proponents and EA participants, the only remedy is for those concerned to await the completion of the project-specific Class EA and resulting ESR, and then request a bump-up/Part II order. The same issue exists in relation to projects subject to environmental screening under the Electricity projects Regulation. The lack of a mechanism for resolving issues prior to completion of the project-specific Class EA is problematic both for proponents and others. Both sectors would benefit by having timely procedures which can resolve disputes during, and not at the end of, the preparation of the ESR, with the objective of avoiding or limiting subsequent bump-up requests.

(b) Increasing certainty and transparency in the processing and resolution of bump-up and elevation requests

Bump-up and elevation requests are especially problematic for proponents, in that they may result in unfathomable delays before they are acted on by Minister's staff, and because they can result in new and unknown factors being potentially considered by MOE staff in their processing. Virtually all Sectoral Tables have recommended that there must be a more transparent and objective basis for the processing of bump up and elevation requests, with some participants suggesting that an entity other than the Minister be given the responsibility to decide such matters.

For example, the Energy Table's Report commented that the elevation process under the Electricity Projects Regulation has been criticized by stakeholders and the public:

> …on the basis that it becomes, by definition, "political", is open-ended and lack transparency. Proponents are concerned about the open-ended timelines for decision-making, and the possibility of entering into a seemingly endless loop of studies and further elevation requests. The affected public are often concerned that imposing conditions or ordering additional studies does not necessarily given them the opportunity

> to know that their concerns have been taken into account; nor is there any quick way to obtain a decision that the project should not be proceeding.

The Energy Table Report contained the following recommendation:

> That the Ministry of Environment eliminate the elevation request process, placing the responsibility for public consultation, appeals, recourse and redress in an adjudicated process. This would have the benefit of depoliticizing the approval process and eliminating the single-most significant source of political risk and investment uncertainty. This would result in approval or denial of the project.

In light of the foregoing observations, the Executive Group concludes that there should be processes and means for dealing with obvious problems in the preparation of a project-specific Class EA/ESR while it is ongoing, instead of waiting until the end for a "bump-up" request. For example, those persons who are concerned about the process might identify a problem with the "need" discussion, or allege there are deficiencies in the scope of alternatives being considered, or the screening criteria being used. If the proponent and stakeholders cannot resolve these themselves, provision should be made for seeking directions from the ERT which could include ERT mediation, or rulings from the ERT during a "time out". We observe that if these procedures are established, the mere fact they exist will likely cause proponents to more carefully consider and use more genuine effort to resolve community concerns during the preparation of an ESR, and not allow these to fester until the end of the process.

Currently there is no regular MOE or other (e.g. public, ERT or EA Advisory Committee) oversight of whether the requirements of the parent Class EA are followed in processing individual projects. Unless a bump-up or elevation is requested, MOE staff do not substantively review or substantively evaluate the Class EA work. Even an MOE internal review pursuant to a bump-up request, in the vast majority of cases, does not lead to any requirement for further or different proponent actions. Moreover, even if an MOE critique is prepared, it is not made public. This "closed door" practice should be contrasted with the public availability of staff reports prepared under the *Niagara Escarpment Planning and Development Act*, which are routinely made available to all interested persons so that they can understand and comment upon the planning advice being provided by staff to the Niagara Escarpment Commission. Under the EA program, without regular oversight analysis or mechanisms for transparency and accountability, there is a diminished ability of the public, the Minister, EAAB or the ERT to cause proponent to act on perceived problems. Accordingly, legitimate concern exists that proponents using the Class EA process can effectively ignore the intent and objective of the EA Act by paying only lip service to the process, and thus deprive the public and environment of discernable public benefits that EA is meant to achieve.

This concern is exacerbated in the absence of any cogent, published analysis of whether the intent of the EA Act, to ensure appropriate consideration of alternatives and the selection of a preferred alternative having regard for predicted environmental impacts, is being achieved through the Class EA process. Despite obvious and significant public concern about how a proponent may be approaching its tasks under a Class EA, the only current means available of getting the proponent's attention is to threaten a bump-up request. Yet with a track record of only a handful of bump-up requests being granted over two decades, this is not a meaningful sanction for proponents.

For example, information supplied to the Executive Group by the MOE indicates that from July 2002 to August 2003, some 68 bump-up requests were received under various Class EAs; however, none of these requests were granted by the Minister.[52] This general refusal to grant bump-up requests appears to continue unabated to the present time.[53]

In general terms, it appears that parent Class EAs are useful mechanisms for expediting the planning and implementation of appropriate classes of projects (i.e. small-scale, recur frequently, minor impacts, amenable to known mitigation, etc.). Thus, the Executive Group is not calling for the repeal of Part II.1 of the EA Act, nor are we suggesting the revocation of approved parent Class EAs in Ontario. Nevertheless, the Executive Group has concluded that there are opportunities to strengthen and improve Class EA procedures, particularly in relation to planning, documentation and consultation requirements.

Some proponents whose projects are covered by Class EAs claim that the absence of successful bump-up requests demonstrates that such requests are unmeritorious, and proves that Class EA planning procedures are working well. The Executive Group respectfully disagrees with this claim, especially given the inherently political nature of the current bump-up decision-making process. In our view, the fact that bump-up requests continue to be filed by Ontarians (despite the strong likelihood of rejection) suggests that there is significant and ongoing public dissatisfaction with Class EA implementation (i.e. insufficient or untimely public notices, inadequate documentation prepared by proponents, unacceptable environmental impacts or trade-offs, inappropriateness of Class EA procedures for particularly significant projects or sensitive sites, etc.).

In this regard, the Executive Group received submissions from members of the public that expressed considerable concern about Class EA implementation. For example, a non-governmental organization provided examples of controversial road projects which were planned under Class EA procedures, but posed significant environmental impacts that appeared to warrant individual EA treatment or resulted in piecemealing (see discussion above).

Procedural and substantive concerns about the Class EA track record – and the general lack of successful bump up requests – have also been raised by the Environmental Commissioner in his most recent annual report as follows:

> - MOE staff have observed that some proponents under the Municipal Class EA submit inadequate environmental studies, and have incomplete or missing project files at key review stages of projects. For example, information on water quality, water quantity, contingency plans and baseline data has been lacking. Tight timeframes prohibiting proper technical reviews are also cited as concerns…

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[52] MOE, *Ontario's Environmental Assessment Program: Report to Environmental Assessment Administrators* (August 2003), page 3.

[53] MOE, *Ontario's Environmental Assessment Program: Report to Environmental Assessment Administrators* (April 2004), page 5.

- MNR staff have similarly raised concerns that the MTO Class EA for highway construction has been unable to achieve environmental protection in instances involving provincially significant wetlands and threatened species habitat. There is also no requirement to prevent a continual net loss of natural heritage features.

- Under Class EAs, the public does have certain time-limited opportunities to request more detailed environmental studies (termed "Part II orders" or, previously, "bump-up requests"). But in practice, there is a very low likelihood that such requests will be granted by MOE. For example, MOE reviewed 11 such requests under the Municipal Class EA in 2002, and all were denied. Similarly, MOE reviewed six such requests under MTO's Class EA in 2001/2002, and all were denied. Under MNR's Class EA for Timber Management, over 80 bump-up requests were made from 1994 to 2001, and all were denied.[54]

- In some cases, members of the public are frustrated when proponents operating under Class EAs change their projects in a significant way after most of the public consultation opportunities are over. The ECO has observed that concerned residents have few options of redress in such situations.

- Under Class EAs, public comments and concerns are submitted to the proponent, rather than to an independent arbiter. The proponent can decide how (or whether) to respond to the concerns. MOE also tends to bounce commenters' procedural concerns about a project back to the proponent.[55]

Furthermore, many bump-up requests are a time-consuming and difficult matter for MOE staff to analyze and process. This is especially so when there are often hundreds of such requests for the same controversial project. But even one bump-up request is sufficient to mandate analysis and time by MOE staff.

To address such concerns, the Executive Group is recommending that proponents, members of the public, and the Minister should be enabled to make summary applications for interim directions (which could include mediation or rulings) from the ERT during the preparation of a project-specific Class EA/ESR or screening under the Electricity Sector Regulation 116/01. No leave test for such applications would be required.

Having determined that there is a need for an expedited mechanism to obtain binding rulings or directions during Class EA or O.Reg.116/01 procedures, the Executive Group carefully considered which administrative decision-maker would be best positioned to adjudicate the issues likely to be in dispute. In particular, the Executive Group considered five possible decision-makers: (a) the Minister; (b) the EAAB Director; (c) the provincial advisory body recommended elsewhere in this Report: (d) a new environmental tribunal; or (e) an existing tribunal. After considering the advantages and disadvantages of these options, the Executive Group decided against using the provincial advisory body since, by its very nature, that body is intended to be advisory rather than adjudicative or quasi-judicial in nature. The Executive Group also decided against using either the Minister or the EAAB Director to resolve interim disputes since both options, in essence, simply represent a continuation of the controversial status quo under Class EAs and the O.Reg.116/01 regime. Similarly, the Executive Group decided against creating a new permanent tribunal, which would pose new fiscal costs, create a new level of bureaucracy, and require new legislation. Accordingly, the Executive Group decided it would be most efficient to utilize an existing tribunal to resolve interim disputes on a summary basis.

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[54] In 1998, the Ontario Divisional Court declared that the MNR had not complied with several provisions of the EA Board's approval of the Timber Management Class EA: see *Algonquin Wildlands League v. Ontario* (1998), 26 CELR (NS) 163; rev. in part (1998), 29 CELR (NS) 29; additional reasons (2000) 32 CELR (NS) 233 (Ont. C.A.).
[55] ECO, *Choosing Our Legacy: 2003-2004 Annual Report* (Oct. 2004), pages 56 to 57.

The next question considered by the Executive Group was which existing tribunal would be best positioned to serve as an effective, efficient and credible decision-maker for these purposes. Options include the ERT, Ontario Energy Board, and Ontario Municipal Board. Having regard for the institutional experience and legislative jurisdiction of these existing tribunals, the Executive Group concluded that the ERT was the best candidate for hearing and deciding summary applications arising under Class EAs and the O.Reg.116/01 regime. For example, the ERT (formerly the EA Board) has long held public hearings under the EA Act, and is already conversant with many of the substantive issues likely to arise on summary applications (i.e. consideration of alternatives, adequacy of public consultation, etc.). Moreover, the ERT's existing rules of practice include a number of important procedural safeguards to ensure that matters are determined on their merits as soon as possible.

In selecting the ERT, the Executive Group recognizes that there may be resource implications associated with using the ERT for this new purpose. Nevertheless, given the expedited nature of the proposed summary application (which could be heard in writing or by teleconference), the Executive Group anticipates that the existing complement of full-time and part-time members of the ERT would not have to be significantly expanded to handle the new workload. Existing and new appointees to the ERT should also receive legal education and professional development opportunities in relation to the new summary procedure. Consideration could also be given to cross-appointing members of the Ontario Energy Board to the ERT to help spread out the workload, and to allow the use of decision-makers with energy expertise to adjudicate applications arising under the O.Reg. 116/01 regime.

In carrying out its mandate, the Executive Group had insufficient time to fully develop and consult upon the operational details that are necessary to implement the new summary application. In addition, it remains to be determined whether the necessary changes can be accomplished via amendments to either the EA Act or regulations, or whether the Minister can administratively delegate her current decision-making authority on bump up/elevation requests to the ERT without legislative change. In any event, to guide further public discussion of this key matter, the Executive Group suggests that this type of summary procedure should include the following features and characteristics:

(a) The ERT should be enabled to provide guidance on the need for the proponent to take further steps to comply with the parent Class EA (e.g., consider further alternatives, gather more or further analyze data, undertake further consultation), and generally advise on or direct the resolution of differences between the proponent and the public. The jurisdiction of the ERT to provide such rulings should, if necessary, be clarified under the EA Act for these purposes.

(b) The ERT should have the authority to determine that the parent Class EA schedule/ category being used by the Proponent should be changed to a more rigorous one, require the proponent to carry out supplementary studies and consultation prior to completing the ESR, as well as direct that the Class EA process be terminated and an individual EA be undertaken, with Terms of Reference to be approved by the ERT.

(c) The ERT should have the authority to impose a "time out" on the proponent proceeding further with or completing the ESR process, where the ERT is of the opinion such time out is appropriate.

(d) Applications to the ERT should be dealt with in an expedited way, and any hearing for these purposes should be limited to one day or less, unless the ERT is persuaded otherwise. Subject to any rules made by the ERT, the hearing should occur within 10 business days of the applicant's materials being filed with the ERT and any usual notice provisions should be modified so as not to delay the hearing of the application. The ERT should be encouraged to provide its direction as soon as possible, and in any event within one week of hearing the application.

(e) MOE staff should be encouraged to provide the Ministry's views on the matter to the parties, and make a written submission to the ERT with the objective of attempting to provide a resolution of the issues, without prejudice to any decision by the ERT.

(f) Where the ERT deems it appropriate, the proponent may be required to provide funding to the community for their engagement of independent expertise and obtaining expert information, and for participation in mediation, with the objective of resolving differences and avoiding bump-up requests at the end of the process.

(g) The ERT should clearly have the authority to engage in mediation as well as rule on applications.

(h) Where the ERT directs that an individual EA with appropriate Terms of Reference be undertaken in substitution for the Class EA process, this ruling becomes final and binding unless within 30 days the Minister rejects or modifies the direction.

(i) Factors to be considered by the ERT in considering whether an undertaking should be required to be processed under a more rigorous category or pursuant to an individual EA should include:

- the intended timing of and any substantive urgency related to the proponent's undertaking;
- likely environmental impacts of the project and their significance;
- extent and nature of public concerns;
- the adequacy of the proponent's planning process;
- the availability of other alternatives to the project;
- the adequacy of the public consultation program and the opportunities for public participation;
- the involvement of the community or complaining party in the planning of the project;
- the nature of the specific concerns which remain unresolved;

- details of any discussions held between the community or person and the proponent;
- benefits of requiring the proponent to undertake further studies and/or an individual EA;
- degree to which public consultation and dispute resolution have occurred;
- how the proposed undertaking differs from other undertakings in the class and the significance of those factors; and
- any other important matters considered relevant.

In addition to the foregoing procedures that may be triggered *during* Class EA planning exercises, the Executive Group is also recommending the creation of a formal adjudicative process, administered by the ERT, to expeditiously hear and determine requests for bump-ups/Part II Orders/elevation requests *after* the completion of an ESR/screening report. For the reasons outlined above, the Executive Group considers that the ERT is best positioned to serve as the adjudicative body to hear and determine bump up or elevation requests that arrive at the end of planning procedures.

More specifically, for the purpose of guiding further public discussion of this key matter, the Executive Group suggests a bump-up application process that includes the following features and characteristics:

a) Where a request is made for a Part II order, bump-up or elevation ("a request") unless the Minister decides the request within 30 days, or within the 30 day period the Minister stipulates a decision will be made within a further 30 day period and makes a decision within a total of 60 days, the proponent or requestor who has substantively participated throughout the project-specific Class EA process, may require the project-specific Class EA to be referred to the ERT for its consideration and decision;

b) The Minister shall provide reasons for any decision made regarding such requests;

c) The ERT shall not consider a request for an individual EA where, prior to completion of the ESR, the ERT had determined no individual EA was warranted for the specific project in issue;

d) Where the ERT holds a hearing in respect of the ESR, the ERT shall have the power to:
   - approve the undertaking with or without conditions;
   - require an individual EA, including approval of the Terms of Reference, and the completion of the EA within specified time limits;
   - require further studies and consultation within specified time limits and adjourn the hearing pending completion of such requirements, following which it shall determine whether or not to approve the ESR/undertaking, unless in the interim the bump-up requests have been withdrawn, whereupon it shall be deemed approved;

e) A hearing before the ERT may be in writing only or an oral hearing. Any hearing before the ERT shall be commenced within 30 days of a hearing request, the hearing limited to 1 day, and a decision rendered within 45 days of the hearing request, unless the ERT otherwise orders;

f) No request shall be granted by the ERT where:
  - There is an objective and apparent basis to conclude that the proponent's project-specific Class EA process conformed to all substantive and procedural requirements of the applicable parent Class EA for the undertaking and the commitments, if any, made by the proponent during the preparation of its ESR or which may have been ordered during that period by the ERT; and,
  - The decision by the proponent as to the schedule in the parent Class EA used for its project was not patently unreasonable.

g) Factors to be considered by the ERT in making its decisions should include:
  - the intended timing of and any substantive urgency related to the proponent's undertaking;
  - likely environmental impacts of the project and their significance;
  - the extent and nature of public concerns;
  - the adequacy of the proponent's planning process;
  - the availability of other alternatives to the project;
  - the adequacy of the public consultation program and the opportunities for public participation;
  - the involvement of the community or requesting person in the planning of the project;
  - the nature of the specific concerns which remain unresolved;
  - details of any discussions held between the community or requesting person and the proponent;
  - benefits of requiring the proponent to undertake further studies and/or an individual EA;
  - degree to which public consultation and dispute resolution have occurred;
  - how the proposed undertaking differs from other undertakings in the class and the significance of those factors; and
  - any other important matters considered relevant.

The Executive Group recognizes that the foregoing recommendations represent a significant change from current practice and procedure under parent Class EAs and the O.Reg.116/01 regime. Nevertheless, the available evidence suggests that significant changes are required in the review and disposition of bump-up or elevation requests.

Some Class EA proponents might argue that permitting Ontarians to file bump-up applications with the ERT will, in effect, open the "floodgates", overwhelm the ERT, and create unnecessary and costly delays for proponents. The Executive Group rejects this argument for several reasons.

First, the overall numbers of bump-up requests are relatively small, particularly in light of the thousands of projects that are pursued under the auspices of Class EAs (especially "pre-approved" and unreported Schedule A projects). Second, even if all current bump-up requests ended up at the ERT, the resulting caseload would still be relatively light when compared to the thousands of planning and zoning matters heard annually by the Ontario Municipal Board.[56] Third, the ERT already has adequate procedural safeguards to screen out applications that are truly frivolous, vexatious, or brought solely for the purposes of delay. Fourth, if ADR and mediation are judiciously used to resolve disputes early and often under Class EA regimes (as recommended elsewhere in this report), then numerous bump-up requests should be scoped if not settled entirely without resorting to the ERT. Indeed, if there is a realistic chance that a bump-up application may be brought (and granted), then proponents may become more amenable towards accommodating the issues raised by concerned citizens in order to avoid an ERT hearing.

Accordingly, the Executive Group is confident that its suggested reforms will result in a more equitable, credible and efficient process than the current regime regarding bump-ups.

ISSUE: TIMELINES

For the most part, the EA Act itself does not expressly impose timelines or deadlines for the completion of key stages of the EA planning and decision-making process. In 1998, however, the Ontario government promulgated the Deadlines Regulation (O.Reg. 616/98), which prescribes deadlines for certain stages involving individual EAs (i.e. completion of the government review). Similarly, Class EAs typically include timeframes for certain steps (i.e. filing or deciding bump-up requests). Despite such timelines, however, many EA stakeholders are concerned that EA decision-making is still not completed in a timely manner, and that there is often uncertainty among proponents (and the public) over the exact status of a particular project within the decision-making process.

RECOMMENDATION 20: TIMELINES

The MOE should review, with proponent and stakeholder input, the adequacy and enforcement of the current timeframes and deadlines within the Deadlines Regulation (O.Reg. 616/98), approved Class EAs, and the Electricity Projects Regulation (O.Reg. 116/01) and Guide.

RECOMMENDATION 21: TIMELINES

The MOE should develop, with proponent and stakeholder input, regulatory amendments that authorize the EAAB Director to extend prescribed deadlines where warranted, provided that:

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[56] In the 2002-03 fiscal year, the Ontario Municipal Board received over 2,000 files on land use matters, including minor variances, consents, zoning by-laws, official plans and plans of subdivision: see OMB 2002-2003 Annual Report.

a) written notice of the extension, with reasons, is provided to the proponent and stakeholders; and
b) the extension notice identifies a new final deadline for the making of the EA decision under consideration.

RECOMMENDATION 22: EA WEBSITE

The MOE should establish a new EA website to include means to enable proponents and stakeholders to electronically track the status of the matter under consideration (i.e. government review, bump-up request, etc.) and to access information or supporting documentation about the matter, and other documentation relating to Ontario's EA program.

DISCUSSION:

Proponents and stakeholders agree that the EA planning and decision-making process should occur in a timely and efficient manner. The Executive Group strongly shares this view, but has received numerous indications that it is necessary to revisit the issue of timelines and deadlines under the EA Act.

For example, the attached Report of the Waste Table states as a fundamental principle that the EA process "should be clear, predictable and timely" (page 6). This Table also notes that "proponents and the public alike have difficulty in acquiring information" on the EA process and on "the status of projects undergoing" EA (page 10). Moreover, this Table expresses concern about government review periods that have exceeded prescribed deadlines, which may be attributable, in part, to incomplete applications (page 11) or staff turnover at the EAAB (page 13). At the same time, this Table acknowledges that it may be necessary for the MOE to extend deadlines in undefined "exceptional circumstances". In such cases, however, this Table recommends that the extensions must be developed and disclosed in a consultative manner, and the MOE must complete its work prior to the expiry of the revised deadline (page 11).

Similarly, the attached Report of the Transportation Table states that the MOE "can take a significant amount of time to consider bump-up requests, sometimes beyond the prescribed 66 days in the MEA Class EA" (page 12). According to this Table, "this practice has the potential to result in delays and extending the timeframes for decisions on projects". Therefore, the Transportation Table recommends that the MOE establish and adhere to "precise deadlines" for making decisions on Part II (bump-up) requests (Recommendation 3.2).

In addition, the attached Report of the Energy Table notes that "significant improvement" in project timelines is "imperative", which will require coordinated action among different levels of government and regulatory agencies (page 5). Accordingly, this Table recommends the establishment of a "process coordinator" to integrate the EA process with other planning or regulatory requirements (page 13). This Table further recommends usage of web-based technology to create an EA registry and information management system in order to ensure better project tracking and enhance public participation (pages 15 to 16).

Similar comments were contained in submissions received by the Executive Group from the public. For example, one submission expressed concern about the difficulty in accessing EA notices on the current EBR Registry, and suggested that "the province provide a free subscription service and list that would provide advance notice of upcoming EAs within a geographic area or type of EA." Other submissions from members of the public commented that the generic timeframes for public and agency review of EA documentation were too short and inflexible, and that they should be amended to set more realistic timeframes that are proportionate to size, cost, duration, complexity and provincial impact of the proposed undertaking. Similarly, one commentator stated that current comment periods tended to deprive municipalities, agencies, and members of the public of a meaningful role during TOR and EA reviews, especially given the voluminous and detailed nature of proponents' submissions.

The Executive Group generally agrees with the above-noted observations and recommendations for website-based reforms. In this regard, it should be noted that the federal government has recently amended CEAA in order to specifically require the establishment of a website that, among other things, provides public notice of EA projects and procedures, EA decision statements, results of mediation or panel reviews, summaries of follow-up programs, and other EA-related records and information: see section 55.1 of CEAA. Thus, the Executive Group strongly urges the MOE to develop and implement an upgraded and effective EA website as soon as possible, with a view towards enabling persons to sign up for notices or updates on EA activities involving a particular issue, undertaking or geographic area.

However, before proceeding with time-related reforms, the Executive Group notes that it is important to have regard for two discrete issues. The first issue is the purpose of EA timelines. To date, EA timelines are largely focused on delivering government performance by a specified deadline. However, it is evident that the public may also be subject to timelines, as they are under other regulatory processes. It is also clear that the public may be adversely affected by uncertainty once EA preparations are underway, but the completion of the EA is largely within the control of the proponent and its consultants. This raises the spectre of a controversial undertaking hanging over the heads of the public for prolonged periods of time. More importantly, this scenario raises the question whether the purpose of timelines should include delivering proponent performance by specified deadlines once the EA process is started or made public.

For example, it may be possible to impose an expiry date on approved Terms of Reference (as was suggested in some public submissions received by the Executive Group) so that if the EA is not completed before the expiry date, the TOR approval lapses and the proponent must submit new Terms of Reference. Such an approach would reduce public uncertainty about slow-moving or incomplete EA preparation, and it ensures that the renewed TOR can reflect changed circumstances or new technologies that emerge during EA preparation. It was further suggested to the Executive Group that there should be an outside time limit placed on EA approvals to ensure that proposed undertakings, if approved, are not "parked" or slowly implemented by proponents over lengthy periods of time, which could result in material changes in circumstances, standards or technologies that make the original EA approvals (or terms and conditions therein) questionable or "stale-dated". On the other hand, there is concern that putting an arbitrary "shelf life" on TOR approvals is contrary to the iterative nature of EA planning, and may tempt proponents to cut corners, or avoid looking at new issues identified by the public, in order to meet the TOR expiry date. With respect to placing expiry dates on EA approvals, it should be noted that the EA Act already provides the Minister with statutory authority to revisit previous decisions where there are changed circumstances (see section 11.4 of the EA Act), although it appears that this power has rarely if ever been used to date.

In light of these competing policy considerations, the Executive Group does not make an explicit recommendation on whether TOR or EA approvals should be time-limited. Nevertheless, this is an option that could be given further consideration by MOE with appropriate proponent and stakeholder input. In any event, given the various implications outlined above, it is clear that the issue of timelines and deadlines is a topic requiring comprehensive, not piecemeal, treatment.

The second issue is what aspects of the EA planning and decision-making process should be subject to explicit timelines and deadlines. Options include: (1) individual EA only; (2) individual and Class EA; and/or (3) individual, Class and sectoral EA. Consideration should also be given to whether regulatory timelines or deadlines should be imposed in relation to other statutory powers of decision under the EA Act (i.e. requests for designation orders, declaration orders, harmonization orders, re-consideration of EA decisions, etc.).

As noted above, the Deadlines Regulation applies only to undertakings for which an individual EA must be prepared and submitted. In particular, the Regulation divides the EA process into seven steps: (1) terms of reference; (2) public notice of the completed EA; (3) initial comment period (prior to government review); (4) review completion; (5) final comment period (following government review); (6) Minister's decision (partial) regarding referral of matter to hearing or mediation; and (7) Minister's decision (complete). For each step, the Regulation provides a specific deadline. The Regulation also varies the applicability of prescribed deadlines in two scenarios: (a) where the proponent wishes to amend the terms of reference; or (b) where the Minister has referred a matter to mediation or hearing: see sections 2 and 3 of O.Reg. 616/98.

The Deadline Regulation appears to be a relatively straightforward regulation with a specific objective and clear deliverables. Nevertheless, it is not as comprehensive as it appears, nor does it seem to have been followed by the MOE in every case. The regulation is not comprehensive in that it does not cover all actions by all participants in an EA process. For example, the regulation prescribes a timeline for MOE action following the submission of proposed TOR, but does not prescribe a timeline for proponent actions leading up to the submission of the TOR, such as public consultation. Similarly, the Regulation provides a timeline for the government review following the submission of the EA, but lacks a timeline to govern how long it takes a proponent to prepare the EA. In addition, the Regulation does not provide any deadlines on matters referred to mediation or a hearing, although the EA Act specifically authorizes the Minister to impose hearing deadlines: see sections 9.1 and 9.2 of the EA Act. There may be legitimate rationales for *not* having deadlines for any of these actions; however, it is arguable that the absence of comprehensive treatment, whatever the reason, undermines the overall purpose and deliverables of the Regulation.

The second major issue with the Regulation is that Ministry personnel do not always comply with the prescribed deadlines. For example, there have been occasions where the MOE has not adhered to prescribed deadlines for TOR approvals and EA reviews, which, in some instances, have been stalled for considerable periods of time. The Executive Group infers that there may be resource reasons that explain, at least in part, this non-observance of prescribed deadlines. For example, it has been suggested to the Executive Group that the EAAB is understaffed and unable to meet all required timelines imposed in relation to individual and Class EAs. Presumably, the imposition of EA application fees (see discussion below) could generate additional revenue to address staffing or resource limitations within the EAAB in order to meet prescribed deadlines.

Another possible explanation for non-observance is that the Ministry, as representative of the provincial Crown, cannot tie its hands to limit action that protects the public interest. If true, this is a structural or institutional limitation which suggests that while timelines can provide an overall administrative target to keep the process moving, they cannot legally bind Ministerial or even Ministry actions.

On this point, the Executive Group notes that similar concerns about timeliness have arisen under the *Canadian Environmental Assessment Act*, and resulted in the 1997 passage of a federal EA timelines regulation (SOR/97-181). However, in response to concerns about governmental non-compliance with the timelines, the federal government created a new position of EA coordinator to try to ensure that federal authorities act in a timely manner, rather than impose even more rigorous or tighter timing requirements.

The Executive Group received a suggestion that if the MOE's review of an individual EA is not completed within the prescribed timeframe, then the undertaking should be deemed to be approved. The Executive Group places great importance on the topic of timeframes and seeks binding procedures that include comprehensive timeframes; however, the Executive Group disagrees with the suggestion that the sole remedy for a missed timeline is "deemed approval" of an undertaking. The essential public interest aspect of environmental assessment and the number of parties affected by undertakings subject to environmental assessment demand that these undertakings receive appropriate examination. Furthermore there may be legitimate reasons (i.e. complexity of undertaking, EAAB staffing constraints, etc.) that prevent the government review from being completed within the prescribed time. It is our expectation that if EAAB is properly resourced, and if the current deadlines are reviewed for their adequacy (see Recommendation 20), then missed deadlines should be the exception rather than the rule.

ISSUE: FEES

Timely and thorough governmental review of individual and Class EAs (and other EA-related activity) requires a significant commitment of EAAB staff time and resources. However, many EA stakeholders have expressed concern that the EAAB may lack sufficient technical, administrative or personnel resources to enable this review function to be carried out effectively and efficiently. Accordingly, there is a need to consider options for generating provincial revenue under the EA Act that can be specifically dedicated towards EA activities undertaken by EAAB staff or other persons or agencies.

RECOMMENDATION 23: FEES

The EA Act should be amended to authorize the making of regulations that prescribe fees (or the method for calculating fees) for certain matters under the Act. Fee revenue should be directed towards EA program delivery and efficiency.

RECOMMENDATION 24: FEES

Once authorized to impose fees under the EA Act, the MOE should develop, with proponent and stakeholder input, a regulation that establishes an appropriate fee schedule for EA actions including hearings. Such regulation should also govern the use, retention, payment or refund of prescribed fees.

RECOMMENDATION 25: FEES

Application fees collected under the EA Act should be used to fund or undertake specified EA-related activities.

DISCUSSION:

There are several environmental precedents in Ontario for requiring applicants to pay filing fees to help offset the cost of delivering governmental services (i.e. technical reviews) related to such applications. For example, applicants seeking certificates of approval under section 9 (air) or 27 (waste) of the *Environmental Protection Act* are required to pay prescribed fees (i.e. a flat fee for "administrative processing" plus additional fees depending on the subject-matter of the application): see O.Reg. 363/98. A similar fee structure has been prescribed for sewage works and water works approvals under the *Ontario Water Resources Act*: see O.Reg.364/98. More recently, the MOE has announced its intention to impose fees in relation to applications for permits to take water.[57] Thus, the current absence of filing fees under the EA Act is highly anomalous, particularly in light of the significant governmental resources that are required to process and review highly technical and often complex EA applications.

Accordingly, the Executive Group recommends that reasonable EA filing fees be established and collected under the EA Act. Such fees are analogous to "user pay" charges levied by all levels of government, and would be consistent with the "proponent pay" principle. Options include establishing a fee tariff or schedule that sets out fixed rates, variable rates (based on scale or complexity of the undertaking), or a combination of both.

While the Executive Group recognizes the need for these revenues to flow into the province's Consolidated Revenue Fund, we feel strongly that the equivalent sum to that collected in EA fees should be directed to support key aspects of the EA program which are currently under-resourced so that they do not place an undue burden on consolidated revenue. If the Ontario government commits to this general principle, then it should not be necessary to establish a special purpose account or trust, as has sometimes occurred under other environmental laws.[58] The Executive Group further acknowledges that it will be necessary to expand the regulation-making powers under the EA Act in order to provide authority to prescribe EA application fees.

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[57] MOE, *White Paper on Watershed-Based Source Protection Planning* (Feb. 2004), pages 30 to 33.

It should be noted that the attached Report of the Waste Table recommends that "the Province allocate sufficient resources" to the EAAB. This Panel further recommends that EA application fees "should be commensurate with the complexity of the review", and that "fees should be applied directly to the EAAB to finance the approvals process" (Recommendation 7).

In order to establish a fair and transparent fee schedule under the EA Act, there are key implementation questions that need to be answered with proponent and stakeholder input. For example, what EA documents or filings should trigger a prescribed fee (i.e. application for approval of terms of reference; application for approval of an individual EA; application for approval (or renewal) of a parent Class EA; filing a notice of completion under a Class EA; filing compliance monitoring reports required by conditions of approval; filing a bump-up, elevation, designation or exemption request)? If fees are payable, what is the appropriate quantum or scale, having regard for the actual cost of delivering governmental services, and for the need to promote a strong economy within Ontario? Should fees be waived or reduced for "green projects" that are subject to the EA Act? Due to time constraints, the Executive Group was unable to address these and other implementation issues related to fees. Thus, the Executive Group raises these issues for further consideration during public consultation on this Report.

ISSUE: MONITORING AND REPORTING

When an individual EA or parent Class EA is approved, terms and conditions are typically imposed by the Minister to ensure that undertakings and projects are carried out in a manner that is consistent with the purpose of the EA Act (i.e. societal "betterment" and protection, conservation and wise management of the environment). Among other things, these terms and conditions often require monitoring and reporting activities by the proponent.

Pursuant to section 38 of the EA Act, it is an offence to contravene the Act, regulations, or terms and conditions of EA approvals. Persons and corporations convicted under section 38 are subject to a fine not exceeding $10,000 for a first offence, or a fine not exceeding $25,000 for subsequent offences.

Despite these provisions, however, EA stakeholders have raised various concerns about adequacy of EA conditions that impose monitoring and reporting obligations regarding environmental impacts (especially cumulative impacts) or the effectiveness of mitigation measures. In addition, some EA stakeholders have questioned the MOE's willingness or ability to undertake inspection and enforcement activities to ensure compliance with the EA Act. Particular concern has been expressed about proponents' non-compliance with terms and conditions contained within individual EA approvals, and with prescribed planning procedures under approved Class EAs. Moreover, some stakeholders report that they have experienced considerable difficulty in accessing monitoring and reporting information in a timely manner under the EA Act, and there have been suggestions that the MOE's internal EA information management system should be upgraded and expanded.

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[58] See, for example, section 85 of the *Fish and Wildlife Conservation Act*, section 6.1 of the *Aggregate Resources Act*, and Part V of the *Crown Forest Sustainability Act*.

Accordingly, the Executive Group is proposing a set of integrated legislative and administrative reforms to strengthen and improve monitoring and reporting under the EA Act, as described below.

RECOMMENDATION 26: MONITORING AND REPORTING

The MOE should, with public input, revise its draft EA compliance strategy, especially in relation to cumulative impacts. Among other things, the revisions should consider the following tools:

a) third party audits;
b) third party notification;
c) electronic access to monitoring reports on proponent websites (or a new EA registry to be established by MOE: see Recommendation 22);
d) "model" monitoring/reporting provisions that can be imposed as conditions for approval in the context of individual EAs, Class EAs, declaration (exemption) orders, and other EA decisions; and
e) periodic review and/or revision of terms and conditions in instruments issued under the EA Act to ensure they remain current, effective and enforceable.

RECOMMENDATION 27: MONITORING AND REPORTING

The MOE should, with public input, develop amendments to the EA Act that:

a) provide provincial officers with inspection and enforcement powers that are currently available under other environmental laws;
b) increase fines to make them consistent with fine levels that are currently available under other environmental laws;
c) empower the courts to impose innovative sentencing orders that are currently available under other environmental laws;
d) impose a "reasonable care" duty upon corporate officers and directors to ensure compliance with the Act, regulations, or terms and conditions in EA approvals; and
e) prescribe a two-year limitation period for the prosecution of offences under the EA Act.

RECOMMENDATION 28: MONITORING AND REPORTING

The MOE should, with public input, develop EA compliance programs and procedures that include substantive guidance on:

a) voluntary abatement and other measures to address relatively minor problems where the non-compliance poses no direct risk to the environment;
b) mandatory abatement and other measures to address all other instances of non-compliance with the Act, regulations or terms and conditions in EA approvals;
c) prosecutions to enforce EA obligations imposed by law; and

d) inspection protocols (i.e. frequency, follow up measures, MOE record-keeping, announced vs. unannounced visits, integration with MOE district work plan inspections, etc).

RECOMMENDATION 29: MONITORING AND REPORTING

The MOE should ensure that the finalized EA compliance strategy is accompanied by appropriate training and educational programs for all MOE staff involved in EA monitoring, inspection and enforcement activities.

RECOMMENDATION 30: MONITORING AND REPORTING

The MOE's current administrative practices/procedures should be reviewed and/or revised to ensure that they adequately reflect or integrate the essential elements of the finalized EA compliance strategy.

RECOMMENDATION 31: MONITORING AND REPORTING

The MOE's current EAIMS (environmental assessment information management systems) should be reviewed and/or upgraded to ensure that it is electronically accessible by all MOE regional and district offices.

DISCUSSION:

General

Under Ontario's EA program, there are three distinct types of EA monitoring that may be carried out by proponents, MOE, or other agencies or stakeholders.[59]

The first type of monitoring is commonly known as "effects monitoring". In essence, such monitoring is generally carried out in the post-approval period (or project implementation phase), and is intended to identify and evaluate the actual environmental impacts that are being caused by the undertaking or project. This exercise generally takes the impact predictions (and baseline conditions) that were noted during the EA process, and compares them to the actual impacts that are being detected through field research, studies, or data collection activities (i.e. soil, water or air sampling/analysis). If effects monitoring reveals that the actual impacts are more significant than originally predicted, or that unpredicted impacts are occurring, then it may be necessary to alter or adjust the undertaking.

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[59] CEAA (*Canadian Environmental Assessment Act*) includes provisions for follow-up programs. At the international level, Appendix V ("Post-Project Analysis") of the UNECE Espoo Convention ("Convention on Environmental Impact Assessment in a Transboundary Context," Espoo Finland, 1991)) includes the following 3 objectives:"(a) Monitoring compliance with the conditions as set out in the authorization or approval of the activity and the effectiveness of mitigation measures; (b) Review of an impact for proper management and in order to cope with uncertainties; (c) Verification of past predictions in order to transfer experience to future activities of the same type."

Effects monitoring is closely related to the second type of monitoring, which is often referred to as "effectiveness monitoring". In essence, such monitoring is intended to evaluate the efficacy of mitigation measures that were proposed and implemented to prevent, minimize, or ameliorate impacts associated with the undertaking. If, despite mitigation measures, undesirable environmental impacts are being detected, then it may be necessary to expand or strengthen the mitigation measures through amended or new terms and conditions. The systematic process of reviewing environmental impacts, and making necessary changes to conditions of approval, is generally known as "adaptive management".

The third type of monitoring is commonly known as "compliance monitoring". Such monitoring is intended to determine whether the proponent has complied with all applicable laws, regulations, or standards. In the individual EA context, compliance monitoring would include a determination of whether the proponent complied with all conditions of approval, and honoured all commitments made to agencies or the public during the EA process. In the Class EA context, compliance monitoring would include a determination whether the proponent complied with all prescribed assessment, consultation, and documentation requirements for the particular project.

The public interest benefits of robust effects/effectiveness and compliance monitoring are well-documented in the literature, and include safeguarding ecosystem and human health, enhancing proponent accountability, and improving the overall quality of EA practice.[60] However, numerous concerns have been raised about the adequacy of the monitoring and reporting regime under the EA Act. For example, a submission received by the Executive Group from the public noted that "the activity of monitoring and reporting on post-construction effects and mitigation is problematic", and that "this issue requires, and deserves, immediate attention" by MOE as the administrator of the EA Act. This submission also posed a number of key questions that, in the view of the Executive Group, are not satisfactorily addressed within the current EA program:

> Are conditions of approval monitored? Does the information learned on one project get carried forward to improve the next project? How does an individual or ENGO access the information? How are cumulative impacts assessed? Who guarantees the authenticity of the data and information and study results?

The Executive Group's more specific concerns about EA monitoring and reporting are set out below.

Effects/Effectiveness Monitoring and Reporting

Effects/effectiveness monitoring and reporting obligations may be imposed as conditions of approval under the EA Act. For example, during an individual EA for a new or expanded landfill, proponents will often propose various monitoring programs to assess the ongoing impacts (if any) upon the environment (i.e. groundwater or surface water quality). If the landfill proposal is approved, the conditions of approval typically impose a legal obligation to not only conduct the monitoring, but also to periodically provide the results to an MOE official (i.e. annual reports), and to develop a contingency plan in the event that monitoring reveals serious or unanticipated impacts.

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[60] Generally, see A. Levy, "Environmental Assessment in Ontario" (2002), 11 J.E.L.P. 173, at pages 247 to 255; Environment Canada, *Strengthening Environmental Assessment for Canadians* (March 2001), page 20; and R. Lindgren, *Monitoring and Environmental Assessment in Ontario* (CELA, 1994).

However, some EA stakeholders have questioned whether the EAAB has sufficient capacity to rigorously scrutinize the incoming monitoring reports and supporting documentation. In such circumstances, it has been suggested that it may preferable to have qualified third parties perform audits of selected undertakings or projects in order to critically review the accuracy and implications of monitoring results.

Another stakeholder concern is that while annual reports and monitoring data may be submitted to the MOE, they are not generally disclosed to, nor easily accessible by, members of the public. For example, monitoring reports are not posted on the MOE's current "EA activities" website, nor have proponents been generally required to post such reports on their own project or corporate websites. In some instances, monitoring information may be provided to facility-specific "site liaison committees" or "public advisory committees" for specific facilities (i.e. landfills). However, these committees do not exist in relation to every project or undertaking subject to the EA Act, and committee members may lack technical or scientific expertise to review and comment upon monitoring reports.

Concern has also been expressed about monitoring and reporting in the Class EA context, particularly since some Class EAs do not yet require the collection and reporting of data regarding the number and type of projects being carried out. Even for Class EAs that now require data reporting, it is unclear how such reports can be used to assess the cumulative impact of countless "Schedule A" projects undertaken under Class EAs (i.e. projects that trigger no EA or documentary requirements).

In light of the foregoing concerns and options, the Executive Group believes that there is room for improvement in key aspects of effects/effectiveness monitoring under the EA Act. Accordingly, the Executive Group recommends that the Minister should refer the matter of effects/effectiveness monitoring to the public advisory body for further consideration and consultation.

Compliance Monitoring and Reporting

The various prohibitions and requirements specified by the EA Act are effective only if there are adequate compliance tools available under the Act, and only if there is a commitment by MOE to utilize such tools in a timely manner. This is especially true in relation to terms and conditions attached to EA approvals, which are generally intended to prevent, minimize or mitigate environmental impacts as undertakings are implemented. However, the mere existence of terms and conditions will not necessarily protect the environment or safeguard the public interest unless there are adequate mechanisms to ensure proponent compliance.

Traditionally, Ontario's EA program has been characterized by an *ad hoc* approach to monitoring, inspection and enforcement activities. For example, where a proponent had made certain commitments during the EA process, or where certain conditions had been imposed by an order or approval under the EA Act, the MOE did not systematically follow up to verify that such commitments or conditions were being complied with by the proponent, or to assess whether the commitments or conditions were actually effective in addressing biophysical or socio-economic impacts associated with the undertaking. Where MOE follow up did occur, it was likely to be complaints-driven rather than an integral part of annual work plan inspections by MOE staff.

Some proponents have expressed the view that non-compliance is a non-issue in both the individual EA and Class EA context. The Executive Group does not share this view, and finds that the available evidence indicates that there is sufficient reason to be concerned about non-compliance under the EA Act.

For example, the EAAB recently conducted an audit of EA files (1988 to 1998) to assess the level of proponent compliance with conditions of approval under the EA Act. Significantly, this study found that "only about 50% of the proponents audited were in full compliance with conditions of EA approval, which indicated a need for a better compliance and monitoring plan".[61]

Similarly, the attached Report of the Energy Table suggests that "more stringent monitoring provisions are required to ensure that proponents comply with the Electricity Regulation, including compliance with commitments and conditions contained within Screening and Environmental Review Reports" (page 23).

Significantly, the most recent annual report of the Environmental Commissioner of Ontario strongly criticizes the MOE's current approach to compliance monitoring:

> The ECO's 2001-2002 annual report raised a number of concerns about MOE's ability as regulator to oversee compliance trends in the various Class EAs. MOE promised a number of improvements to compliance and monitoring of Class EAs, including a requirement that annual reports eventually be prepared by all proponent agencies. But MOE conducted only cursory reviews of annual reports submitted for 2002 and carried out little follow-up…
>
> MOE has taken several important steps to implement a compliance monitoring program. But the ministry should be more active to ensure that proponents are complying with the terms and conditions of their Class EA… In 2002, MOE reviewed a number of Municipal Class EA planning processes and found examples where the proper process was not used and the required documentation was incomplete. MOE staff noted at the time that proponents should give more attention to compliance with EA commitments, and should carry those commitments through into project-specific environmental permits…
>
> It is noteworthy that many applications for investigation under the EBR have involved alleged violations of Class EAs and concerns were not adequately monitored by MOE…

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[61] MOE, *Ontario's Environmental Assessment Program: Report to Environmental Assessment Administrators* (2003), page 7.

> These applications for investigation and court proceedings reinforce the need to take its responsibility for monitoring Class EAs seriously…
>
> Overall, this application [individual EA for Highway 69 expansion] illustrates a number of systemic weaknesses in the EA process: that MOE does not have the resources to properly monitor the large number of approvals it issues under the EAA; that MOE continues to rely on a complaints-based compliance model; and that MOE is practically unable to prosecute proponents for failure to comply with the EAA.[62]

In addition to the Environmental Commissioner's reports, the need to improve the MOE's EA compliance monitoring efforts has also been highlighted by the Provincial Auditor and other EA stakeholders in recent years.

In response to such concerns, the MOE has developed an EA information management system (EAIMS) to record EA submissions and track EA conditions in order to facilitate compliance monitoring. Similarly, the MOE has attempted to incorporate compliance monitoring details into conditions of EA approval (i.e. annual reporting obligations within some approved Class EAs). The MOE has also considered the use of third party audits, Internet posting of monitoring reports, and other options for ensuring compliance with EA obligations.

While this recent progress is encouraging, these reform efforts should be prioritized and implemented as soon as possible. In addition, there is still room for considerable improvement in EA monitoring, inspection and enforcement activities, as discussed below.

Powers of Provincial Officers

A perusal of the current powers conferred upon provincial officers under the EA Act (Part IV) reveals that such powers are not as extensive as those typically found under other environmental statutes in Ontario. For example, the *Environmental Protection Act*, *Ontario Water Resources Act*, *Safe Drinking Water Act*, *Pesticides Act*, and *Nutrient Management Act* generally empower provincial officers to undertake a wide variety of inspection activities and to issue binding administrative orders to require compliance or to prevent or remediate environmental harm. More recently, the Ontario government has proposed statutory amendments that would empower provincial officials to issue immediate monetary penalties in order to punish and deter spill-related offences under environmental legislation (see Bill 133).

In contrast, all of the inspection powers currently available under the EA Act are compressed within a single provision (section 25), which does not provide authority to issue field orders, install tracking devices, use reasonable force, obtain police assistance, secure places or things, or undertake other investigative practices and techniques available under other environmental laws.

In the absence of such provisions under the EA Act, it has sometimes fallen by default to non-governmental organizations to ensure compliance by filing investigation requests under the *Environmental Bill of Rights*, initiating private prosecutions under the *Provincial Offences Act*, or commencing judicial review applications under the *Judicial Review Procedure Act*. It goes without saying that these legal measures can be time-consuming, costly, uncertain, and, most importantly, occur *ex post facto* (i.e. after the alleged non-compliance has occurred). From the public interest perspective, inspection and enforcement activities should be aimed at preventing the commission of offences under the EA Act. Similarly, inspection and enforcement activities should be undertaken in a proactive manner by the MOE, which has the mandate to do so but must be adequately resourced and staffed to undertake such measures. Accordingly, citizen enforcement of EA Act requirements should be viewed as a supplement to – not a substitute for – governmental activities to ensure compliance with the Act.

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[62] ECO, *Choosing Our Legacy: 2003-2004 Annual Report* (Oct. 2004), pages 57, 73, and 150.

Fines and Offences under the EA Act

As noted above, the maximum fine currently available under the EA Act is $25,000, which can be imposed only where the defendant is convicted of committing subsequent offences under the Act.

This limited fine quantum stands in contrast to the much larger fines available under the EPA and OWRA. For example, depending on the nature of the offence, maximum fines for corporate defendants range between $100,000 to $10 million under these environmental laws. The courts are also empowered to order imprisonment for certain offences, and can impose other innovative sentencing dispositions (i.e. restoration order, profit-stripping, restitution, forfeiture, etc.). From a public policy perspective, it is unclear why offences under these other laws trigger much higher penalties, even though the potential for environmental harm is omnipresent for the environmentally significant undertakings subject to the EA Act. At the very least, the fine structure under the EA Act should be generally consistent with fine structures currently available under other environmental legislation.

It may be countered that higher fines are not appropriate under the EA Act because it is an environmental planning statute rather than a pollution control law like the EPA or OWRA. It should be noted, however, that other environmental planning statutes (i.e. *Niagara Escarpment Planning and Development Act*, *Oak Ridges Moraine Conservation Act*, etc.) prescribe fines that are higher than those found in the EA Act. Even the *Planning Act* prescribes $50,000 fines for first offences by corporations that contravene the Act or by-laws enacted thereunder.

Another significant omission in the EA Act is the continuing failure to impose a statutory duty upon directors and officers to take all reasonable care to ensure that corporations comply with the Act, regulations, or terms and conditions of EA approvals. Given that similar provisions imposing officer/director liability are currently found in the EPA, OWRA, and the *Nutrient Management Act*, it is unclear why such a provision is wholly absent from the EA Act. Indeed, as private corporations assume greater roles within the electrical and waste sectors (see discussion elsewhere in this Report), a director/officer provision under the EA Act can only serve to enhance – not reduce – corporate compliance with EA obligations imposed by law.

Significantly, the EA Act does not prescribe a specific limitation period for the commencement of prosecutions under the Act. In effect, this means that EA prosecutions must be commenced within the six-month limitation period prescribed by section 76 of the *Provincial Offences Act*. This relatively short limitation period stands in sharp contrast to Ontario's other environmental laws (i.e. EPA, OWRA, *Pesticides Act*, etc.), which generally prescribe a two-year limitation period for environmental offences. Presumably, the two-year limitation period is intended to provide MOE officials sufficient time to investigate alleged environmental offences, verify the nature and extent of the alleged non-compliance, and determine whether prosecution or some other regulatory response is warranted in the circumstances. Since there appears to be no public policy rationale for prescribing different limitation periods for environmental offences, the Executive Group recommends that the EA Act should be amended to establish the two year limitation period found in other environmental laws in Ontario. It should noted that an identical recommendation has recently been made by the Environmental Commissioner of Ontario.[63]

Comprehensive EA Compliance Strategy

Merely "beefing up" provincial officers' powers, increasing fines, creating new legal duties, or extending limitation periods under the EA Act does not necessarily resolve non-compliance concerns unless the MOE concurrently adopts a comprehensive compliance strategy under the EA Act. To date, the MOE has initiated some steps towards developing an EA compliance strategy, but this work appears to remain unfinished at the present time.

On this point, it should be noted that the attached Report of the Energy Table recommends that the MOE "develop and approve a plan for proponents to monitor compliance with the environmental screening process, and for MOE to monitor the performance of the Guide and Regulation" (page 23). The Executive Group concurs with such suggestions, but believes that the need for comprehensive EA compliance monitoring is not unique to the energy sector. In our view, effective compliance monitoring is required across the entire EA program whenever conditions are imposed or commitments are made.

The Executive Group is aware that the MOE's current "Compliance Guideline" (Guideline F-2) provides general guidance on the use of voluntary abatement (i.e. written requests or agreements), mandatory abatement (i.e. issuing orders or revoking approvals), or prosecutions. However, this Guideline provides no EA-specific details on ensuring compliance under the EA Act (i.e. by imposing effective monitoring/reporting conditions in EA approvals). In addition, the MOE has prepared – but has not finalized – a draft EA compliance strategy. Moreover, the EA Act currently confers no statutory authority for provincial officers to issue compliance or preventative orders, as discussed above.

Thus, it is incumbent upon the MOE to publicly develop and implement a comprehensive strategy for ensuring compliance under the EA Act. Once finalized, this strategy could be implemented via EA compliance programs and procedures that provide substantive direction on key EA matters, such as:

- circumstances where it would be appropriate to use voluntary abatement measures (i.e. where the alleged non-compliance with EA obligations does not pose a direct risk to the environment);

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[63] ECO, *Choosing Our Legacy: 2003-2004 Annual Report* (Oct. 2004), Recommendation 7, page 73.

- circumstances where it would be appropriate to use mandatory abatement measures (i.e. where the alleged non-compliance represents a serious contravention of the Act, regulations, or terms and conditions in an EA approval);
- circumstances where it would be appropriate for the MOE to initiate a prosecution under the EA Act;
- criteria and standardized wording for monitoring/reporting provisions that can be imposed as conditions for approval in individual EAs and Class EAs, as well as conditions for granting exemption requests or refusing designation or "bump-up" requests;
- inspection protocols (i.e. frequency, follow up measures, MOE record-keeping, announced vs. unannounced visits, integration with MOE district work plan inspections, etc.); and
- criteria and standardized wording for conditions for requiring third party audits, third party notification, statements by proponents to certify compliance, and post-approval reporting on a proponent website (or an EA registry established by MOE).

In addition, the EA compliance strategy should clearly articulate an MOE policy of strictly enforcing the EA Act, regulations and terms and conditions in EA approvals. In particular, the strategy must make it abundantly clear that violations of EA planning requirements or EA conditions will not be tolerated, and will result in adverse consequences for the persons responsible for such violations.

Once the EA compliance strategy has been finalized, it should be accompanied by appropriate training and educational programs for all MOE staff involved in EA monitoring, inspection and enforcement activities (see EA training discussion, *supra*). The MOE's other administrative practices and procedures should be reviewed and/or revised to ensure that they adequately reflect or integrate the essential elements of the finalized EA compliance strategy. Similarly, the current EAIMS should be reviewed and/or upgraded to ensure that it is electronically accessible by all MOE regional and district offices.

As discussed above, the overall intent of the EA Act is "the betterment of the people of Ontario" by providing for the protection, conservation and wise management of the environment. In short, this laudable legislative purpose cannot be realistically achieved unless there is a coordinated and properly resourced effort by MOE to ensure proponent compliance with all EA obligations imposed by law.

ISSUE: TRAINING

The quality, credibility and reliability of EA documents submitted by proponents under the EA Act are heavily dependent upon the knowledge, skill and experience of the consultants retained by proponents to undertake the necessary EA work. However, no explicit training, testing or certification standards exist under the EA Act in relation to persons who perform EA work on behalf of proponents, or who review such EA work on behalf of the Ontario government.

RECOMMENDATION 32: TRAINING:

The MOE should develop, with proponent and stakeholder input, appropriate EA training and educational programs under the EA Act, and should recover the cost of developing and

delivering EA training and educational programs by charging appropriate fees to participants in such programs. The MOE should ensure that EA training and educational programs are available to all Ontario government staff (including but not limited to MOE EAAB, Regional Office, and District Office staff) involved in the delivery of the province's EA program.

RECOMMENDATION 33: EA REVIEW PROTOCOLS

The MOE should develop appropriate collaborative protocols with other provincial ministries and agencies in order to ensure that government reviews under the EA Act are undertaken by qualified persons in accordance with specified parameters and timeframes.

DISCUSSION:

The success of Ontario's EA program is greatly dependent upon the competence of EA consultants and governmental EA reviewers. Education and experience are important components of ensuring such competence.

Under Ontario's EA program, proponents are generally required to initiate planning exercises, design consultation programs, prepare technical reports, perform literature reviews, complete scientific studies, and pursue other detailed work as may be warranted by the proposed undertaking. This is particularly true in the individual EA context, where proponents are obliged by law to assess, evaluate and consult upon the issues and options described in approved Terms of Reference. This is also generally true in the Class EA context, where proponents must prepare adequate (and accurate) public notices, environmental study reports (ESR's) or related documentation, and must otherwise comply with the applicable planning procedures specified in the approved parent Class EA.

However, some EA stakeholders have expressed concern over poor quality EA submissions that have been submitted for public and agency review, and over the inadequacy of public consultation programs undertaken by some proponents. Similar concerns have been expressed about the capacity of EAAB project officers (or other government reviewers) to undertake meaningful reviews of specialized work completed by proponents and their consultants. Such problems may be exacerbated as EAs become increasingly complex in terms of the technical and scientific issues to be considered.

The Executive Group also received public input that expressed concern about the general lack of continuity in EAAB staff who are assigned responsibility for a specific individual EA or Class EA project. Proponents have expressed similar views indicating that while occasional staffing limitations may arise from time to time, "it is obviously preferable to have systems in place to ensure continuity on a project from commencement to completion." For example, an energy proponent advised the Executive Group that "for each proposed project, we recommend that there be one MOE EAAB staff and one Senior Manager designated as contacts for the project, including EA approval; permitting; and any other environmental approvals relating to the project."

At the same time, some EA proponents have been critical of the MOE's general reluctance to provide substantive advice to them (or their consultants) on how to comply with EA requirements. For example, in the attached Report of the Transportation Table, it is stated that "MOE staff have been reluctant to provide advice on how to apply the Class EA process to individual projects, although there is some variance across the province" (page 12). It is further suggested that the MOE reluctance to provide upfront advice may result in delayed approvals and wasted resources where proponents have pursued EA procedures or methodologies that may ultimately be judged by MOE to be procedurally incorrect or substantively deficient (pages 12 to 13).

To address such problems, the Transportation Table recommends that: (a) the MOE take "a more active role in ensuring that municipalities have a clear understanding of the EA process in Ontario"; (b) the "MOE should provide appropriate resources for course development and training for existing and future EA practitioners"; (c) the "MOE and MEA [Municipal Engineers Association] collect best practices related to the Class EA process and make them available to practitioners and the public"; and (d) the MOE should provide "sound EA practice guidance" by disseminating EA updates through traditional and electronic means such as email or EA website posting (Transportation Table Recommendations 6, 7.1, 7.2, 9.1, 9.2, and 9.3).

The Executive Group received similar public input in relation to training. For example, a submission received from a member of the public commented that "the MOE does not provide adequate training, guidance and consistency for proponents and, especially, for the public." According to this commentator:

> [P]roponents must be taught better consulting methods whereby all EA participants can learn from and with each other (e.g. Action Learning). Training opportunities open to the public and practitioners must be available at prices that are within reach of all attendees. Different course levels must be available in the evening so that all persons can attend. An updated website that provides information in non-technical language to all citizens and proponents must also be created to ensure full understanding.

It should be noted that some people who are involved in EA planning exercises (i.e. lawyers, professional engineers or geoscientists, etc). are licensed or accredited, and may be subject to sanctions imposed by their self-governing professional bodies for breaches of professional standards. However, other practitioners who conduct or participate in EA matters (i.e. planners, wildlife biologists, social impact assessors, etc.) may have received post-secondary education in their respective disciplines, and may be members of professional or voluntary associations, but are not generally subject to regulation by self-governing bodies. Indeed, it appears that virtually any person can identify himself (or herself) as an "EA planner" without completing any special licencing or training requirements whatsoever.

It should be noted that such problems are not unique to Ontario's EA program. In fact, these kinds of difficulties have been encountered in other areas of environmental law, particularly where the Ontario government and the public alike are greatly dependent upon the education and experience of environmental consultants.

In the context of "brownfields" development, for example, the *Environmental Protection Act* has recently been amended to specify that "records of site condition" may be filed only where a "qualified person" has certified that a phase one or two environmental site assessment has been completed in accordance with the regulations: see section 168.4 of the EPA. The phrase "qualified person" is further defined in O.Reg.153/04 by describing the licencing and educational requirements that must be held by persons who conduct or supervise site work, or risk assessments, in relation to "brownfield" properties.

In light of this legislative precedent, the Executive Group has considered whether the EA Act (or regulations) should require EA submissions to be formally "signed off" by qualified persons who, acting on behalf of proponents, certify that all required EA steps have been duly completed by the proponent. However, acting on the advice of the Transportation Table and other EA participants, the Executive Group does not recommend the development of a formal licencing, accreditation or "certification" regime under the EA Act at this time.

Instead, the Executive Group recommends that the immediate focus should be the provision of comprehensive EA training and educational courses that provide practical information and user-friendly materials on how to satisfy the procedural and substantive requirements under Ontario's EA program.

In this regard, it should be noted that the Minister is already empowered under section 31 of the EA Act to:

- convene conferences and conduct seminars and educational and training programs with respect to EA;
- gather, publish and disseminate information with respect to EA; and
- make grants or loans for research or training of persons with respect to EA.

Given that this statutory authority currently exists, the Executive Group suggests that the Minister should make more extensive use of such powers to deliver EA training and educational opportunities.

It should be noted that under the *Canadian Environmental Assessment Act*, the Canadian Environmental Assessment Agency is actively involved in designing and delivering training opportunities (i.e. seminars and educational documents) regarding federal EA requirements, and the Agency charges people a fee to participate in such programs. Accordingly, the Executive Group sees no reason why the MOE cannot become similarly proactive in EA training and educational matters under the EA Act.

A renewed emphasis upon EA training and professional development in Ontario will require the MOE to develop course curricula and training materials on key EA matters, such as the conduct of EA planning, preparation of EA documentation, and implementation of public consultation programs. EA training courses and educational materials could be developed in partnership with interested professional or industry associations, and EA training opportunities should be provided to proponents, consultants or other stakeholders on a full cost recovery basis.

However, EA training opportunities should not just be limited to proponents, consultants or other stakeholders. Instead, EAAB project officers and other government reviewers should also be encouraged to participate in EA training and educational opportunities. Not only would such an approach improve the soundness and credibility of governmental EA decisions, but it would also enhance the quality and consistency of governmental advice to proponents and other stakeholders. In this regard, the attached Report of the Transportation Table notes that sometimes "different MOE staff provide inconsistent EA-related advice to practitioners on similar projects" (page 14). Similarly, the attached Report of the Waste Table recommends that the province provide sufficient resources to the EAAB to ensure that the EA Act and EPA "approval processes are supported by the technical expertise expected by proponents and the public" (Recommendation 7).

Accordingly, the Executive Group recommends that the MOE should ensure that adequate training and continuing education opportunities be made available to provincial employees who are directly involved in the review of EA submissions. In addition, the Executive Group recommends that the MOE should develop appropriate collaborative protocols with other provincial ministries and agencies in order to ensure that government reviews under the EA Act are timely, effective and expert.

In summary, the benefits of enhanced EA training and educational opportunities include:

- ensuring that both MOE and other reviewing Ministries have adequate expert capacity;
- producing more effective consultation and better quality EA submissions (i.e. draft and final documents);
- promoting more efficient use of government review resources (i.e. less time spent on deficient EAs, or bump-up requests based on non-compliance with prescribed Class EA procedures); and
- enhancing accountability and professionalism within the EA planning process.

ISSUE: CONSOLIDATED APPROVALS

When passed initially, the *Consolidated Hearings Act* (CHA) was intended to assist proponents subject to the EA Act by facilitating the hearings process and eliminating the potential for inconsistent hearings results. The CHA also has potential to address many undertakings not subject to the EA Act, but nevertheless subject to several regimes and tribunals. In recent years, the CHA has not been widely used because the EA Act has not triggered hearings, the list of statutes has not been updated, and the change from the Environmental Assessment Board and the Environmental Appeal Board into the Environmental Review Tribunal has exempted a broad range of undertakings from the CHA, even where such undertakings may trigger major hearings before different regulatory tribunals. Changing this situation is directly related to the larger agenda of clarifying and expediting approval processes, particularly for undertakings facing multiple approvals and processes.

RECOMMENDATION 34: CONSOLIDATED APPROVALS

The MOE should amend regulations under the *Consolidated Hearings Act* to facilitate one consolidated hearing for matters subject to EA and other approvals, (e.g., *Environmental Bill of Rights, Aggregate Resources Act, Ontario Water Resources Act*).

RECOMMENDATION 35: RELATIONSHIP BETWEEN EPA AND EA:

The MOE should amend O.Regs. 206/97 and 207/97 to remove the automatic prohibition on EPA and OWRA hearings to ensure that:

a) mandatory and/or discretionary hearings under the EPA and OWRA may be held in relation to waste disposal sites, waste management systems and sewage works which are subject to approval (or exempted) under the EA Act, depending upon the environmental significance (i.e. risks and benefits) posed by such facilities; and

b) joint board hearings under the EA Act, EPA and/or OWRA are available pursuant to the *Consolidated Hearings Act* where applicable.

DISCUSSION:

The CHA was passed in 1981. It has no purpose section, but its purpose is clear from section 2, which deals with its application. According to section 2:

> This Act applies in respect of an undertaking in relation to which more than one hearing is required or may be required or held by more than one tribunal under one or more of the Acts set out in the Schedule or prescribed by the regulations.

Thus, section 2 makes four points:

(1) it may apply to any undertaking, which is broadly defined, using terms similar to those found in the EA Act;
(2) it applies where more than one hearing is required or *may be required*;
(3) it applies where the existing or potential hearings involve more than one tribunal; and
(4) it applies where the existing or potential hearings are set out in the statutes set out in the Schedule to the Act or *prescribed by regulations*.

According to this section, the application of the CHA is mandatory: if there is a *possibility* of multiple hearings before multiple boards under the scheduled or prescribed legislation, then the Act applies. There is no discretion set out in section 2.

Where the CHA applies, section 3 requires the proponent of the undertaking to give written notice to the Hearings Registrar established under the Act, who is presently the secretary to the Environmental Review Tribunal (ERT). Once notice is received, the Hearings Registrar refers the matter to the chairs of the ERT (formerly, the Chair of the Environmental Assessment Board) and the Ontario Municipal Board (section 4(1)). These two chairs create a joint board from among their combined membership (section 4(2)). The resulting joint board hears all of the matters identified in the notice and can make any decision that the original tribunal(s) could have made (section 5(2)), and a decision by the joint board is final, subject to a cabinet appeal (section 13).

The CHA also makes provision for third parties to trigger the CHA. Section 24 makes provision for any party to a hearing before a tribunal under a scheduled or prescribed Act to bring a motion seeking to trigger the application of the CHA. The motion is brought to any of the tribunals subject to the statute and the tribunal may thereby order the proponent to give notice to the Hearings Registrar set out by the Act.

From its inception until the mid-1990s, the CHA was used for a vast array of major undertakings from the waste and energy sectors, with virtually all such applications involving the EA Act. The benefit offered proponents was to ensure that matters which received the comprehensive planning review provided by former section 5(3) of the EA Act could in turn receive a single, comprehensive hearing as opposed to a succession of hearings before different boards with the potential for different, if not inconsistent, results.

To display the scope of the problem remedied by the CHA, it is helpful to review merely a few of the notices issued under the CHA for different landfill projects:

(1) Halton landfill (notice: 1986; decision 1989): EA Act, *Environmental Protection Act*, *Ontario Water Resources Act*, *Conservation Authorities Act*, *Ontario Municipal Board Act*, *Municipal Act*, *Expropriations Act*.
(2) North Simcoe landfill (notice: 1987; decision: 1989): EA Act, EPA, *Planning Act*, *Expropriations Act*, *Ontario Municipal Board Act*, *Municipal Act*.
(3) Meaford landfill (notice: 1988; decision: 1990): EA Act, EPA, *Planning Act*, *Expropriations Act*.

More recently, however, the CHA has not been widely used. There are at least three major reasons for this lack of use:

(1) the EA Act has not been the source of more than two hearings in ten years;
(2) the list of statutes subject to the CHA has not been updated to address all Acts and approvals which raise significant environmental issues and involve regulatory hearings before different tribunals; and
(3) the CHA exemption regulation has not been updated to properly address the ERT or the new complexities raised by water takings and/or air approvals.

Each of these points merits further examination.

(1) The CHA is largely a proponent-driven statute. As set out above, the CHA is triggered by a notice from a proponent who has a number of approvals that will or may trigger hearings. In the late 1980s, where individual EA Act approvals were virtually always referred by the Minister to a hearing, a proponent could move pre-emptively to trigger the hearing by the CHA notice and thereby save what could have been months of time associated with a Ministerial referral. By contrast, under the post-1996 EA Act regime, there have been virtually no Ministerial referrals to the ERT, making it disadvantageous for a proponent to act pre-emptively by triggering a hearing

where none may otherwise be required. One reason for this difference is an amendment to the CHA regulation preventing an EA proponent from using the CHA without the permission of the Minister.

(2) The CHA schedule lists ten statutes: the EA Act, EPA, *Expropriations Act*, *Municipal Act*, *Niagara Escarpment Planning and Development Act*, *Ontario Municipal Board Act*, *Ontario Planning and Development Act, 1994*, the *Ontario Water Resources Act*, the *Planning Act*, and the *Regional Municipality of York Act*. Two significant omissions from this schedule are the *Aggregate Resources Act* (ARA) and the *Environmental Bill of Rights, 1993* (EBR).

The CHA also makes provision for regulations to add additional statutes to section 2. For example, Regulation 171, as amended, has added the ARA to the listed statutes on an undertaking-by-undertaking basis. This approach has largely followed the wishes of proponents: where they seek a consolidated hearing, the government has passed the amending regulation, but where not requested by the proponent, the government has not acted to pass a regulation. Last year, for example, regarding the proposed McCarthy quarry that is now before the ERT for a sewage works approval and the water takings permit, the Ontario Municipal Board sought to grant the motion of the Trent Talbot River Property Owners Association by specifically requesting that the MOE pass a regulation adding a proposed quarry to the CHA Regulation. However, the Ministry refused, apparently supported by the Ministry of Natural Resources. As a result, the OMB hearing went forward for three weeks, and subsequently the separate ERT hearing will go forward for at least two weeks.

On the other hand, the EBR is not a listed Act or addressed through any CHA regulation. The EBR triggers hearings where the tribunal such as the ERT grants leave to appeal a decision that is subject to leave according to EBR regulations. The failure to include the EBR means that a hearing which has received leave cannot be consolidated under the CHA.

(3) The CHA authorized an exemption regulation – Regulation 173, as amended - which is now significantly out of date.

Reviewing what the authors of Regulation 173 did intend, it would appear that they intended to exempt an undertaking from the CHA where it involves the *Planning Act* and *only* an approval that could be subject to a hearing through an appeal to the Environmental Appeal Board. The leading example of such an approval is a water taking permit. Thus, the CHA currently exempts undertakings that require both *Planning Act* approval and water taking approval, such as bottling plants and pits or quarries below the water table. It is not clear what the historic basis for this exemption was, although one possible rationale was that such permits or approvals were not considered sufficiently important to require a consolidated hearing. However, that history is no longer consistent with current priorities or public attitudes. Today, the Ministry is clearly devoting major attention to water taking permits and the public is clearly concerned with such permits. Furthermore, given recent history involving water issues and the Ontario Municipal Board, there are an increasing number of undertakings which will require both *Planning Act* approvals and water taking permits. It may also be the case that some air approvals also raise significant issues and currently lack integrated hearings with other approvals related to the same undertaking. Without a consolidated hearing, there is a duplicative and thus unduly expensive hearing process as well as potential for inconsistent hearing results.

In sum, having regard to both points, it appears anachronistic to maintain this exemption in its current form.

ISSUE: REFINEMENTS TO THE ELECTRICITY PROJECTS REGULATION AND GUIDE

As noted above, EA requirements for electricity projects are currently set out in O.Reg. 116/01 and the associated Guide. However, based upon three years' worth of experience under this EA regime, the Energy Table has identified potential changes aimed at clarifying and improving the EA requirements that are applicable to electricity projects.

RECOMMENDATION 36: REFINEMENTS TO ELECTRICITY PROJECTS REGULATION AND GUIDE

The MOE should post a notice on the EBR Registry to solicit public comment on changes to the Electricity Projects Regulation and Guide proposed by Section 5 of the Energy Table Report.

DISCUSSION

This matter is discussed in detail at pages 17 to 24 of the Report of the Energy Table. The Executive Group also received some submissions from the public that supported the need to adjust or "finetune" the Electricity Projects Regulation and Guide.

ISSUE: REFINEMENT TO MUNICIPAL CLASS EA

As noted above, the current municipal Class EA does not include municipal transit projects. This omission means that such transit projects must undergo an individual EA (or be exempted) under the EA Act.

RECOMMENDATION 37: REFINEMENT TO MUNICIPAL CLASS EA

In collaboration with the Municipal Engineers Association (MEA), the MOE should immediately initiate amendments to the MEA Class EA to include municipal transit projects.

DISCUSSION

This matter is discussed in detail at pages 9 to 11 of the Report of the Transportation Table.

ISSUE: RESEARCH UNDERTAKINGS

Currently, "research" undertakings are exempted from the provisions of the EA Act. The lack of definition of what "research" entails has led to uncertainty regarding this type of exemption, as well as the temptation to include activities which may be closer to development than research. For these reasons, it is important to clarify the nature of the research undertakings eligible for exemption; while this category could be especially useful for emerging green technologies, it is critical that those technologies with the potential to cause significant harm be thoroughly tested in a safe manner, and that exempted projects not cause or contribute to environmental risks.

RECOMMENDATION 38: RESEARCH UNDERTAKINGS

The MOE should review and revise the "research" exemption under the EA Act to include emerging green technologies, and to clearly define appropriate parameters for "research" undertakings (i.e. temporal limits or operational capacity).

DISCUSSION:

The issue of emerging technologies is one that warrants much thought in the application of EA requirements. While new green technologies offer the promise of reducing environmental and social impacts associated with waste, transportation and energy production, some of them may still cause significant adverse effects and should be carefully examined prior to implementation. Technologies tested elsewhere but new to Canada should, when they can be shown to be benign, be either exempted or expedited through an abbreviated process.

"Research" as referenced in the regulation could be expanded to include emerging green technologies, but only if they meet certain criteria, which are determined to avoid negative impacts. These could possibly be based on experience elsewhere, but for new Canadian-developed technologies, this will be more difficult to assess. In these latter cases, "research" could be defined to identify very small-scale projects, designed to generate local data. They should, furthermore, be limited to only three years duration, and have a low capital cost and geographic span and extensive monitoring requirements. Monitoring results should be shared with a community group, established to participate in the evaluation of the research results.

CHAPTER 4: RECOMMENDATIONS REQUIRING FURTHER CONSULTATION/REVIEW

In this chapter, the Executive Group lists several recommendations which require further public consultation or review before being implemented. In general terms, the matters addressed by these recommendations were inspired by issues raised by the Reports of the Waste, Energy and Transportation Tables, or by submissions received by the Executive Group from the public. However, the substance of these issues could not be adequately considered by the Executive Group due to time constraints, and further reflection and/or consultation should be undertaken by MOE in order to develop appropriate measures to address these issues.

ISSUE: GENERAL REGULATION

The General Regulation under the EA Act (Regulation 334) has evolved over a lengthy period of time, and currently contains a diverse range of definitions, exemptions, and procedural requirements. As the recommendations in this Report are implemented, it will be necessary to review and, where necessary, revise the General Regulation to ensure consistency.

RECOMMENDATION 39: GENERAL REGULATION

The MOE should consider revising Regulation 334 in accordance with suggested changes found in Volume II.

DISCUSSION

The General Regulation under the EA Act currently applies to individual undertakings and those which may be covered by the Class EA process. It would not influence undertakings which are governed now or in future by sectoral regulations (e.g. O.Reg.116/01, "Electricity Projects"). It includes a grab-bag of provisions dealing with a variety of issues.

Additions or changes can be made to the General Regulation without the need for any legislative amendments, or if necessary, after somem inor house-keeping amendments of the EA Act's regulation-making powers. Several changes to Regulation 334 could be effected in the near future, while others may require a longer timeframe to implement.

In Volume II of this Report, the Executive Group provides a list of potential changes to the General Regulation that the MOE might consider, along with some illustrative and diverging comments brought forward by the three Sectoral Tables.

ISSUE: MUNICIPAL EA COMMUNITY ADVISORY/LIAISON COMMITTEES

The Executive Group believes that there is a potential for establishing formalized municipal EA community liaison committees in the EA process. The general intent of such committees would be to provide a forum and mechanism whereby the Class EA process and individual EAs are given transparency at the local level, to ensure that reasonable alternatives are identified and given serious consideration by the proponent prior to completing its Class EA, with the objective of resolving issues and avoiding the need for, or narrowing the basis for, bump-up requests.

RECOMMENDATION 40: MUNICIPAL EA COMMUNITY ADVISORY/LIAISON COMMITTEES

The MOE should request that the advisory body consider the option of creating local or regional standing EA advisory and/or liaison committees, with a role in the EA development and review process (for projects subject to Class EAs as well as for individual EAs) within delineated study areas.

DISCUSSION:

The Executive Group believes that long-term consideration should be given to whether permanent (volunteer) EA liaison committees should be established in municipalities or regions across Ontario. Conceptually, these committees would be analogous to site liaison committees sometimes established by proponents in relation to waste disposal facilities, or public advisory committees sometimes established by municipalities to assist in land use planning matters. However, EA liaison committees would not be focused exclusively upon an individual project, nor would the committees be disbanded once a particular project has been planned and completed. Instead, these committees would continue to exist as stand-alone entities which could be engaged whenever proponents initiate planning procedures under a parent Class EA (or O.Reg.116/01 and Guide) for projects to be sited within the locality.

The actual role, composition and mandate of EA liaison committees should be developed and refined by the provincial advisory body in consultation with proponents and other EA participant. To assist in such deliberations, the Executive Group offers the following preliminary thoughts on the structure and function of EA liaison committees.

In general terms, the overall intent of EA liaison committees would be to provide a public forum at the local level to enhance the accountability and transparency of Class EA procedures (i.e. to ensure that reasonable or locally appropriate alternatives are identified and given serious consideration by the proponent). By facilitating and accommodating public concerns over such issues, the existence of these local EA committees may greatly assist in resolving the issues in dispute and avoiding the need for (or at least narrowing the basis of) bump-up applications.

Where no municipal EA liaison committee exists, the proponent, in conjunction with the MOE staff, could be encouraged (or directed) to ensure such a committee is established before the proponent begins planning or designing a project that is subject to Class EA procedures.

EA liaison committees should be comprised primarily of non-elected residents, with at least some members experienced or knowledgeable in EA. Provision should be made to declare and avoid conflicts of interest. In some cases, the committee might include or consist of the local planning advisory committee or another existing municipal committee, provided that there are persons on it with EA experience and that there is a majority of non-elected citizens. The composition of the committee should allow for the appointment of one or two additional temporary members to represent communities affected by a particular proposal.

Fiscal and administrative support for EA liaison committees could be provided by MOE, municipalities and/or proponents. Generally, committees should be enabled to access independent technical or EA planning expertise (i.e. peer reviews) in order to meaningfully review and comment upon proposed Class EA projects. Provincial funding for such committees could be derived either from general revenues or from the pool of funds collected from EA application fees (see discussion above).

The committees should be enabled to request (or require) a "time out" in the Class EA process to ensure the generation and meaningful consideration by proponents of appropriate alternatives, mitigation actions, or compensatory measures, prior to the finalization of the Class EA studies or reports.

Specific responsibilities of the EA community liaison committee could include the following matters:

(a) provide a consultation/feedback forum to assist affected communities and proponents in coming to common understandings or resolving issues about proposed projects;
(b) ensure that proponents understand procedural concerns raised by the public (e.g. inadequate notice, lack of consideration of appropriate alternatives, etc.) and suggest measures to address such concerns;
(c) determine whether independent technical or EA process advice would be helpful in resolving public concerns, and arrange for such advice where warranted;
(d) carry out or arrange for alternative dispute resolution procedures (e.g. mediation); and
(e) request or require a "time out" on the proponent taking future steps in the Class EA process, where the committee is of the view that further studies, consultation or ADR processes may assist in resolving stakeholder concerns.

ISSUE: INCORPORATING MASTER PLANS INTO EA PROCESS

When evaluating transportation infrastructure projects, alternatives to the undertaking (including transit (such as increased service) and transportation demand management (TDM) strategies) cannot always be effectively considered in a corridor. Due to the diverse nature of trip origins and destinations in a community, the Transportation Table suggests that transit improvements need to be implemented on a broader basis to be effective as a transportation alternative. Exceptions would include implementation of higher order transit. These types of strategies are generally described within a community's Transportation Master Plan. Currently, the Master Plan process does not result in approvals through the EA or *Planning Act*. It would be beneficial for transportation network strategies such as transit and TDM to receive recognition through an approval process, so they become the starting point or base case against which other alternatives are measured.

RECOMMENDATION 41: INCORPORATING MASTER PLANS INTO EA PROCESS

The MOE should request the advisory body to review the relationship between infrastructure master plans (e.g., transportation) and the EA process.

DISCUSSION

This matter is discussed on pages 19 to 20 of the Report of the Transportation Table. The Executive Group also received public input raising concerns about the uncertain manner in which transportation master plans are proposed and implemented (with minimal public awareness) through instruments under the *Planning Act* (i.e. official plan amendments) and the EA Act.

CHAPTER 5: CONCLUSIONS

In June 2004, the Ontario government established an Advisory Panel to the Minister of the Environment, consisting of an Executive Group and three Sectoral Tables, to provide recommendations for improving Ontario's EA program, particularly as it relates to the energy, waste and transportation sectors.

The Executive Group began detailed work on its EA review and recommendations in August 2004. Over the past six months, we have been actively engaged in the process of considering concerns with the current application of the EA program, and developing appropriate recommendations in this Report to address such concerns. During this time, from September to November 2004, the three Sectoral Tables also examined EA-related problems in each of their sectors, and submitted their reports to the Executive Group in November 2004.

The Executive Group has benefited from reports and comments of the Sectoral Tables, discussions with MOE staff, and various public submissions, all of which have suggested ways in which EA planning and decision-making can be strengthened and improved in the province. This Report and its recommendations reflect the considerable effort and discussion contributed by all parties.

The Executive Group has concluded that Ontario's EA Act is fundamentally sound but requires minor legislative, regulatory and administrative fine-tuning. In the view of the Executive Group, the problem is not the EA Act itself, but the way in which the Act has been interpreted and applied without the benefit of overarching principles and sector-specific policies to guide EA planning and decision-making. One of our principal findings is the need for the MOE to develop guiding principles and to entrench them in a policy guideline under the EA Act. We have suggested that the Ministry adopt the goals of "betterment" and "protection of the environment", and enshrine such principles as sustainability benefits, public participation, the precautionary principle, the ecosystem approach and environmental protection under the Act. The Executive Group also endorses the objectives of having a process that, among other things, is: (a) clear, consistent, predictable, transparent and timely; (b) integrated with other planning and approvals processes; and (c) is based on good data, good science and sound engineering.

A related key recommendation is that the MOE should develop sector-specific policies under the EA Act that would direct EA planning and decision-making in sectors such as waste, energy and transportation. Sector-specific government policies should include a hierarchy of preferences based on the degree of benefits and the risk of impact of different types of projects within each sector. These policies could be used to identify and prioritize "green projects". Since the Executive Group did not have sufficient time to finalize such policies, we recommend that the government appoint small, balanced and representative sectoral working groups to develop them. The Executive Group did, however, develop draft policies that are included in Volume II of this Report, and strongly encourages the MOE to use these as a template and starting point for sector working group activities.

At the same time, the Executive Group has identified the need to develop better, clearer and more timely EA procedures that are directly tied to the degree of environmental benefits or risks posed by any undertaking or class of undertaking. The EA procedural framework that we have developed in our Report is intended to impose appropriate planning, consultation and documentation requirements that reflect the benefits and risks associated with different types of projects within each sector. As per the draft sector policies, the Executive Group has also included a set of draft sector procedures for energy, transportation and energy (see Volume II), and strongly encourages the MOE to use these as a starting point and template for the work of sectoral working groups.

The Executive Group's key recommendations will result in some significant changes in the content, structure and delivery of Ontario's EA program. The Executive Group recognizes that these changes, which will improve the EA process, may impose costs on the government, at least in the short term. In considering the cost of implementation, the Executive Group has weighed the short-term costs against the medium and long-term benefits and savings associated with the proposed reforms. Although there may be a need for a reassignment of staff within and outside the MOE to facilitate EA reform, the Executive believes that implemented reforms can be realized with the existing complement of provincial staff. Initially there will be some increased costs associated with start-up of the reform process, however, when implemented, the EA reforms will result in a more cost-efficient program for both the public and private sector. Moreover, when compared to the cost of doing nothing, or maintaining the status quo the upfront cost of reform is modest. Therefore, we are proposing that the provincial government introduce a system of EA fees that will be used to enhance the operational capacity of the Ministry and all facets of its EA program.

The Executive Group has made a concerted effort to articulate and build a system of recommendations that will achieve the goals of the Minister of the Environment to revitalize, rebalance and refocus the EA program in Ontario. We hope that our recommendations will provide the basis for changes to the EA program that can be implemented as effectively and as expeditiously as possible.

APPENDICES

APPENDIX 1: EA GLOSSARY

Note: Definitions provided in this glossary are intended to assist the reader in understanding the provisions related to the environmental assessment program areas as defined in the *Environmental Assessment Act*. The terms may hold slightly different meanings in other contexts. An asterisk (*) beside a defined term indicates that the term is defined in the Act. For these terms, the Ministry of the Environment advises that both the definitions in this section and in the Act be consulted for a complete understanding. In all cases, the wording contained in the Act shall prevail.

Alternative Methods:
Alternative methods of carrying out the proposed undertaking are different ways of doingt he same activity. Alternative methods could include consideration of one or more of the following: alternative technologies; alternative methods of applying specific technologies; alternative sites for a proposed undertaking; alternative design methods; and alternative methods of operating any facilities associated with a proposed undertaking such as: facility capacity; service area; rate of use; alternative preventative and monitoring techniques; and alternative end uses for a site or facility where appropriate.

Alternatives To:
Alternatives to the proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity. For example, functionally different methods of addressing a waste disposal problem may include: source reduction; recycling; composting; energy from waste facilities; incineration, and disposal at a landfill site.

Alternatives:
Both alternative methods and alternatives to a proposed undertaking.

Amendment:
A change to an application which can be initiated by the proponent before a decision is made about the undertaking. The Act specifies when amendments can be made and under what circumstances.

Application:
An application for approval to proceed with an undertaking under subsection 5(1) of the Act.

Approved Terms of Reference:
A Terms of Reference that has been approved by the Minister of the Environment.

Class Environmental Assessment Document:
A document that sets out a planning process under the Act for certain classes of undertakings that have predictable and mitigable environmental impacts. A proponent that receives approval for a class of undertakings does not need to obtain separate approval under the Act for each specific undertaking, provided the class planning process prescribed for that class is adhered to for the undertaking.

Class Environmental Assessment Undertaking:
An undertaking that does not require any further approval under the Act if the planning process set out in the Class Environmental Assessment document is followed. The Class environmental assessment planning process may occasionally result in an environmental assessment having to be done for the undertaking under section 5.1 of the Act.

Commitments:
A guarantee from the proponent that a mutually agreed upon solution to a problem will be carried out in a certain way. Proponents acknowledge these guarantees by documenting obligations and responsibilities which they agree to follow in environmental assessment documentation. Once the Minister approves the undertaking, the commitments in the document become legally binding.

Consultation:
The activities carried outb y a proponent to provide a two-way communication process to involve interested parties in the planning, implementation and monitoring of a proposed undertaking. Consultation is intended to:

- identify issues and concerns;
- identify relevant information;
- identify relevant guidelines, policies and standards;
- facilitate the development of a list of all required approvals, licences or permits;
- provide guidance to the proponent about the preparation of the Terms of Reference and Environmental Assessment document;
- ensure that relevant information is shared about the proposed undertaking; and
- encourage the submission of requests for further information and analysis early in the environmental assessment process.

Consultation Record:
A document submitted with the proposed Terms of Reference that identifies all persons consulted during Terms of Reference preparation; outlines the preliminary consultation activities undertaken; clearly and accurately summarizes the issues and concerns raised; provides copies of written comments, names and addresses received from interested persons; and demonstrates how concerns raised were addressed in the proposed Terms of Reference.

Deadlines Regulation:
Refers to Ontario Regulation 616/98, which establishes the timing of reviews and decisions for Terms of Reference and environmental assessments.

Declaration Order:
An Order-in-Council, made by the Minister and approved by the Lieutenant Governor in Council, declaring that some or all of the provisions of the *Environmental Assessment Act* do not apply to the proposed undertaking.

Declaration Order Request:
A request to the Minister, usually from a proponent of a proposed undertaking subject to the *Environmental Assessment Act*, requesting that some or all of the provisions of the *Environmental Assessment Act*, not apply to their proposed undertaking.

Designating Regulation:
A regulation made by the Lieutenant Governor in Council which designates a proposed undertaking that normally would not be subject to the *Environmental Assessment Act* as subject to the requirement of the *Environmental Assessment Act*.

Designation Request:
A request from a proponent, member of the public or government agency asking that a proposed undertaking normally not subject to the requirements of the *Environmental Assessment Act* be made subject to the Act's requirements.

Director:
Director of the Environmental Assessment and Approvals Branch, Ministry of the Environment

Do Nothing Alternative:
An alternative that is typically included in the environmental assessment that identifies the implications of doing nothing to address the problem or opportunity that has been identified.

Draft Environmental Assessment:
A version of the environmental assessment that the proponent may submit to the Ministry and other interested persons before a formal submission to solicit comments so that issues and concerns about the document can be identified and considered before the formal submission.

Draft Terms of Reference:
A version of the Terms of Reference that the proponent may submit to the Ministry and other interested persons before a formal submission to solicit comments so that issues and concerns about the document can be identified and considered before the formal submission.

Environment*:
air, land or water;
plant and animal life, including human life;
the social, economic and cultural conditions that influence the life of humans or a community;
any building, structure, machine or other device or thing made by humans;
any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or;
any part or combination of the foregoing and the interrelationships between any two or more of them.

Environmental Assessment:
An environmental assessment is a document submitted pursuant to subsection 6.2(1) of the Act. The environmental assessment process is a planning and decision-making process used to promote good planning by assessing the potential effects of certain activities on the environment.

Environmental Assessment Act:
The *Environmental Assessment Act* [as amended by the *Environmental Assessment and Consultation Improvement Act*, 1996, S.O. 1996 c. 27, Schedule E and F of the *Red Tape Reduction Act*, 2000, S.O. 2000 c. 26 and c.9, Schedule G, s.3 S.O. 2001] provides for the protection, conservation and wise management of the environment in Ontario by providing for an accountable, logical and reproducible decision-making process. It lays out a planning and decision-making process and encourages environmental protection within the context of a broadly defined environment.

Environmental Assessment and Approvals Branch:
The branch of the Ministry of the Environment that administers the Act.

Environmental Effects:
The effects that a proposed undertaking has, or could potentially have, on the environment, either positive or negative, direct or indirect.

Environmental Registry:
An online registry, administered by the *Environmental Bill of Rights* Office, that provides Ontario residents with access to vital information about environmentally significant proposals and decisions of prescribed Ontario government ministries. Ontario residents have a right to comment on proposals for certain new acts, regulations (such as designation regulations and declaration orders), policies or instruments (such as permits and Certificates of Approval) posted to the Registry (generally, a 30-day comment period applies).

Environmental Review Tribunal (Tribunal):
The Environmental Review Tribunal is a quasi-judicial, independent and impartial tribunal which conducts public hearings to determine applications under prescribed environmental legislation in Ontario. The members are appointed by the Lieutenant Governor in Council, of which there must be a minimum of 5 members, none of whom may be employed by the Ministry of the Environment.

Environmental Study Report:
The documentation for a specific project planned in accordance with a parent Class Environmental Assessment document which sets out the planning and decision-making process, including consultation, followed to arrive at the

preferred solution. It also sets out impact management measures proposed to avoid or minimize environmental effects and commitments to monitoring and compliance.

Government Review Team:
The staff from the Ministry of the Environment (including Ministry of the Environment technical reviewers), various other federal, provincial and local government agencies and others who are invited to participate, who contribute to the review of the proposed Terms of Reference by providing comments based on their mandated areas of responsibility.

Impact Management Measures:
A range of activities carried out by the proponent of an undertaking to avoid, minimize, adverse environmental effects of a proposed undertaking and to enhance the benefits of an undertaking.

Individual Environmental Assessment:
A term used to distinguish an environmental assessment conducted under subsection 5(1) of the *Environmental Assessment Act* from Class environmental assessment projects carried out under subsection 13(1) of the Act.

Interested Persons:
Individuals, First Nations, or organizations with an interest in a particular undertaking. Interested persons are not required to demonstrate that they will personally be affected by a particular undertaking. Often called stakeholders.

Master Plans:
Long range plans integrating infrastructure requirements for present and future land use with environmental planning principles. These plans examine the whole infrastructure system in order to outline a framework for planning for subsequent projects and/.or developments.

Mediation:
A non-binding technique used to resolve disputes with the assistance of a neutral third party (mediator).

Minister*:
Minister of the Environment.

Ministry*:
Ministry of the Environment.

Ministry of the Environment Technical Reviewers:
Ministry staff, other than the Project Officer, who contribute to the review of the proposed Terms of Reference. Comments from Ministry of the Environment technical reviewers form the ministry input with respect to those matters related to the administration of statutes for which the ministry is responsible, other than the Act.

Mitigation:
The activities carried out by a proponent of an undertaking to avoid/minimize or ameliorate the potential adverse environmental effects of the undertaking.

Monitoring:
The activities carried out by the proponent after the approval of an undertaking to determine the environmental effects of an undertaking (effects monitoring). It can also refer to those activities carried out by the ministry in ensuring that a proponent complies with the environmental assessment and the terms and conditions of the approval of the undertaking (compliance monitoring). A third type of monitoring is effectiveness monitoring in which a proponent evaluates how effectively the parent Class Environmental Assessment document is working in the planning and implementation of the Class Environmental Assessment projects.

Net Environmental Effects:
The environmental effects of an undertaking, or its alternatives, after all reasonable impact measures have been considered.

Places of Public Record:
Official location(s) where interested persons may review the Terms of Reference and Environmental Assessment submitted to the ministry during the environmental assessment process.

Project Officer:
The assigned staff member from Environmental Assessment and Approvals Branch who manages and coordinates the review of Terms of Reference and Environmental Assessments for specific undertakings.

Proponent*:
A person who: carries out or proposes to carry out an undertaking; or is the owner or person having charge, management or control of an undertaking.

Proposed Terms of Reference:
A Terms of Reference that has not yet received the approval of the Minister.

Public Record File:
A record of every undertaking for which there is an application for approval under the Act which is maintained by the Environmental Assessment and Approvals Branch in accordance with section 30 of the Act.

Significant Environmental Impact:
An impact to the environment caused directly or indirectly that cannot be mitigated and/or managed effectively.

"Stand Alone" Document:
Additional documentation prepared separately from the Terms of Reference and Environmental Assessment, which provides more information, but is not subject to the approval of the Minister.

Supporting Documentation:
Documentation that is submitted to the ministry in addition to the proposed Terms of Reference, which provides further information on issues discussed in the proposed Terms of Reference. Information contained in the supporting documentation should support the proponent's request that the Terms of Reference be approved by providing rationale for the choices made and details of processes or methodologies to be used.

Terms and Conditions:
Represent the resolution of outstanding issues after an environmental assessment has been submitted to the Minister of the Environment. A tool for making sure that the implementation, construction, operation or closure of an undertaking satisfies the requirements of the Government Review Team and addresses public and community concerns. Terms and conditions are also used in Declaration Orders. Terms and conditions are legally binding.

Terms of Reference:
A document submitted by the proponent to the ministry which sets out the framework for the planning and decision-making process to be followed by the proponent during the preparation of the Environmental Assessment for the proposed undertaking. The Terms of Reference is submitted early in the environmental assessment process and must be approved by the Minister. Once approved, the Terms of Reference becomes the framework for the preparation of the Environmental Assessment. The Environmental Assessment must be prepared in accordance with the approved Terms of Reference.

Undertaking*:
An undertaking means:

- an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities.
- a major commercial or business enterprise or activity or a proposal, plan or program in respect of a major commercial or business enterprise or activity of a person or persons other than a person or persons referred to in clause (a) that is designated by the regulations; or

- an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity of a person or persons, other than a person or persons referred to in clause (a), if an agreement is entered into under section 3.0.1 in respect of the enterprise, activity, proposal, plan or program.

APPENDIX 2: ENERGY TABLE REPORT

(Formatting of below Sector Table Report may be different than originally submitted)

Energy Panel's Report and Recommendations on Improvements to Ontario's Environmental Assessment Process

November 23, 2004

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Introduction

Environment Minister Hon. Leona Dombrowsky appointed an executive advisory panel, and three sector-specific panels, to provide "expert advice and guidance on improvements to Ontario's Environmental Assessment process" to support the "... government's waste diversion and waste management, clean energy and transportation objectives".

The stated purpose of the advisory panel is to meet the government's goals to:

1. "**Revitalize** the EA program, providing clear, prescriptive rules for appropriate environmental planning and decision-making.
2. **Rebalance** EA decision-making by setting out clear roles for all participants.
3. **Refocus** the EA process such that the level of assessment and review of proposed undertakings reflects the potential that proposal have to positively or negatively impact the environment as defined by the *Environmental Assessment Act*."

Further details were provided[64] including terms of reference for the panel and sector sub-panels and a "statement of challenge":

> "The challenge identified by the Environment Minister's EA Advisory Panel is how to improve the environmental assessment regime of Ontario in order to ensure fair, balanced, comprehensive, transparent, accessible, inclusive and participatory environmental planning and decision-making for all undertakings (plans, policies, programs and projects) governed by the Environmental Assessment Act, resulting in outcomes that maximize sustainability while at the same time providing for the benefit of all proponents and other participants, particularly in priority sectors (waste management, clean energy and transportation-transit), an effective process that is reasonably: efficient (with respect to cost); timely (with respect to speed); clear (with respect to rules); disciplined (with respect to process); independent (non-biased and apolitical); flexible (adjustable where appropriate to time constraints, size of undertaking, level of potential environmental impacts, etc.); and, sensitive to specific context (including individual sectoral needs and differences)."

After the appointment of the energy sector panel, the members first met with members of the Executive Panel and staff of the Ministry of the Environment on October 4, 2004. The energy panel then met on four occasions. At these meetings, they discussed the Executive's advice to the energy sector panel as expressed through its General Principles, the Terms of Reference and the EA Policy Guideline for energy generation undertakings. The current operation of the provincial government's EA requirements for electricity facilities was assessed, and a number of issues and possible solutions were identified for further discussion.

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[64] http://www.ene.gov.on.ca/envregistry/023747ex.htm

On November 8, the energy panel held a workshop at the Ontario Heritage Centre. The panel distributed a series of principles and questions in advance of the workshop to energy stakeholders. The workshop was attended by a broad range of interested people including representatives of the energy industry, the consulting community, the provincial government, municipalities, environmental organizations and community groups. The energy panel invited the participants' input on issues, challenges, opportunities and priorities. These were discussed in both a plenary session and individual workshop groups.

A report of the workshop was done for the energy panel (see Appendix II), and individual stakeholders who attended the conference submitted to the Ministry of Environment and to the panel further proposals for improvements to the EA process for the energy sector. The input of the stakeholders present at the workshop reinforced the energy panel's appraisal of the key impediments and added to the potential improvements to environmental assessment processes that had been identified. The energy panel met after the workshop to discuss issues arising from stakeholder consultations.

1.1 Principles and themes

Consistent with the direction of the Minister and the Executive Panel, and reflecting the expertise and experience of energy panel members and stakeholders, the Panel has developed its own "Principles and Themes" to guide its work. These incorporate a number of the elements contained in the Executive's advice, and they also reflect our experience with the current EA framework for these projects.

1. **One project, one process**—to promote the review, assessment and approval of projects through a single process by integrating administrative functions of multiple review and approval authorities; clarifying criteria and accountability for decision-making, and eliminating redundant and unnecessary steps and processes.

2. **Transparency and disclosure**—to promote better information management and fuller disclosure, to increase stakeholders' understanding of legal and regulated requirements, to maintain or enhance opportunities for effective public participation in decision-making processes, to remove undue hurdles and barriers to entry for smaller enterprises and to reduce regulatory burden and cost for proponents, regulatory authorities and the public.

3. **Refinement rather than wholesale change**—the regulation of EAs for the energy sector went through an extensive process of consultation and change in 2001, resulting in the Electricity Projects Regulation and the Guide to Environmental Assessment Requirements for Electricity Projects ("the Guide"), and further consultation in 2003. Based on the breadth and depth of that process

and considering the recent experience of proponents, review agencies and the public, the panel is inclined towards a pragmatic approach to recommend incremental and positive changes, but not to make change for its own sake.

4. **Clear policy role**—issues such as need, alternatives, and the public interest need to be clearly related to overall Provincial goals with respect to energy, land use and resource management planning and public engagement.

5. **Improvements should be lasting and positive**—recommendations for changes to environmental assessment processes should create opportunities for improvements that benefit proponents, regulatory authorities, the public and the environment.

Further to these general themes, the panel has discussed more specific principles that should guide improvements in environmental assessment and approval processes. While the report does not align specific recommendations against these principles, the panel recommends that implementation mechanisms be assessed against them.

1. The scale and extent of project review and assessment and approval should reflect the scale of potential negative and positive impacts of a project.

2. The scale and extent of public participation and consultation should reflect the scale and extent of potential impacts and the level of public interest in a project.

3. The question of scale includes addressing challenges faced by small projects and the potential for disproportionate regulatory burden.

4. Significant improvements to project timelines will require coordinated action by multiple levels of government, within and across government departments, and among government and regulatory authorities is imperative.

5. Matters of provincial interest are most appropriately defined by clear policy direction at a provincial level.

In discussing issues and recommendations, the Panel has reflected whether comments and suggestions from stakeholders, and proposed recommendations, are consistent with these principles.

1.2 Comments on Principles Suggested by Executive Members

At the commencement of the process the Executive of the Minister's Panel provided the Energy Panel with a number of general principles regarding EA and an EA policy guidelines for energy generation undertakings.

The energy panel supports a number of the general principles suggested by the executive panel, relating to a desire overall to:

- Promote more sustainable development in Ontario,
- Err on the side of caution in making decisions with uncertain impacts,
- Engage meaningful public participation in decision-making processes,
- Apply appropriate ecosystem and life-cycle principles in project review and approvals,
- Protect the environment, broadly defined, and
- Promote provincial interests and government policies.

The current EA requirements for electricity projects already incorporate these features to some extent and our recommendations will, we hope, enhance them still further. However, the Energy Panel has reservations regarding the extent to which a number of the principles, policies and priorities created by the Executive Panel would assist in meeting the purpose of the panel review and the EA Advisory Challenge in the energy sector. The Energy Panel does not recommend enshrining these principles in legislation without thorough analysis and extensive additional consultation. The approach to environmental protection is well established in existing legislation and profound changes, such as those suggested by the Executive Panel, would require a comprehensive assessment of the impacts.

It is not clear that making these principles paramount is in the public interest, given the broad articulation of the public interest (in respect of matters of provincial interest) with respect to the energy sector that already exists and is documented in this report

Further to the discussion of principles, the Energy Panel has developed a number of recommendations and proposals for improving the environmental assessment process for energy projects in the areas of:

- **clarifying government policy (Section 2),**
- **integrating the administration of approvals and permit requirements into a single coordinated process (Section 3),**
- **improving the transparency of the process and enhancing public participation (Section 4), and,**
- **making immediate improvements to environmental assessment through refinements to "The Guide" and Regulation 116.**

The recommendations in our report represent a broad consensus on changes that need to be made to achieve the objectives outlined in the Minister's challenge. While not all the members of the Panel agree with all the recommendations, we agree with the general directions suggested in the report.

2. Clear Government Policy

The Energy Panel identified the need for the Government to provide clear policy guidance in a number of areas to promote a focused and consistent energy system, to avoid duplication and inefficient use of proponent and stakeholder resources, and to facilitate approvals for energy projects.

The following outlines four key areas for provincial policy intervention:

2.1 The Need to Clarify the Province's Leadership Role in the Assessment of "Alternatives To" Undertakings

The *Environmental Assessment Act* contains clear requirements for proponents to consider alternatives to undertakings in the EA process. Such alternatives typically encompass strategic alternative ways of solving problems. In the energy sector, such alternatives encompass identification of the optimum overall blend of generation and distribution to serve a given population, and also drive the selection of a mix of renewable versus non-renewable energy sources. In practice, the need for the undertaking is also typically addressed by this step in the EA process.

The Panel agrees that a defensible analysis of "alternatives to" is necessary to ensure appropriate public accountability for decisions made on energy projects (subject to the Act) because it is at this strategic decision-making point when the most dramatic changes can be made to reduce and avoid environmental impacts. Examples for the energy sector include strategic choices to: a) support energy conservation to reduce the need for generation; and b) promote renewable energy supplies and distributed energy production rather than strictly conventional approaches.

Thus, the question is not whether strategic alternatives should be considered but how. Specifically, the question is how or whether the EA process can best contribute to this part of the decision-making process. For the energy sector, the analysis of energy needs and "alternatives to" is clearly being directed by the Province. The relevant recent initiatives announced by the Government include:

- Creation of the Ontario Power Authority (OPA) which will ensure long-term supply adequacy in Ontario including preparation of an integrated system plan. It is expected that this plan will be prepared in an open and consultative manner and will be reviewed and approved in a public forum by the OEB. The plan will direct the private sector when needed to build new generation capacity;

- Creation of a Conservation Secretariat within the Ontario Power Authority to direct Ontario's conservation effort;

- Redefinition of the role played by the Independent Electricity Market Operator (IMO) as defined in its new name - the Independent Electricity System Operator (IESO) through which decisions on issues of relevance to the EA process (such as the need for transmission capacity) will be directed;

- An intention to create specific provincial policy that sets conservation targets (through the Ministry of Energy). The OPA will be charged with achieving the targets set by the government and would include them in their system planning.

> The targets will include conservation, the use of renewable energy, and the overall supply mix of electricity in the province.

It is the Panel's opinion that it is fully appropriate for the Government to complete the strategic analysis of the need and alternatives for energy in the province and to identify the optimum mix of projects to be subject to the project specific EA process. The Government has a wide breadth of authority for determining the mix of generation and transmission as well as pricing and conservation that cannot be matched by individual project proponents.

In developing the mandate of the Ontario Power Authority, the government should ensure that the proposed decision-making process for strategic energy choices meets the core principles of the EA process – open and consultative, considering natural, social, technical and economic criteria and considering a reasonable range of alternatives. If this proves not to be possible then an alternative mechanism that meets these requirements should be developed. The use of strategic environmental assessment is provided for by the EA Act as a means of developing plans, policies and programs, and may be a useful model in this instance.

Recommendations:

Given these initiatives by the Province, documentation and reference to alternatives to (and need) in the EA process for individual energy projects should be limited to reference to the specific directive(s) from the Province that have identified the specific project. Examples would include a Government led RFP process for increased generation or direction from the IMO to reinforce transmission capacity.

Regulation 116 and the associated Guidelines should be clarified to reflect this Government led process and the expectations for proponents to document the government's directives. The Regulation cannot be silent on this important issue. The Regulation and Guide must be clear that all levels of regulated EAs (i.e. Levels A, B, C and any Class EA) following from the Regulation and Guidelines defers decisions on "alternatives to" to the Provincially led decision-making process for energy.

Given that the Government's recently announced initiatives for energy management are not fully approved or implemented, the Ministry of Environment will have to work closely with other sectors of government (notably the Ministry of Energy and the Ontario Energy Board) to be assured that the expectations and principles described above are in place before changes are entrenched in the EA process deferring responsibility for "alternatives to" from proponents to the Government.

It is important to note that the Panel recommends that responsibility for a full evaluation of alternative methods/means for Category C and certain transmission projects will remain the responsibility of individual proponents. Typically, this includes an assessment of alternative sites/routes and relevant technologies/designs. Such analysis will be necessarily constrained by the mandate and authority of the proponent to implement alternatives.

2.2 The Need for Greater Clarity on Matters of Provincial Interest

Discussion:

Recognition of "provincial interests" (e.g. the Planning Act Policy Statement) is necessary, but it needs to be recognized that provincial interests will collide in some cases, where significant trade-offs are at hand and difficult decisions must be made e.g. for linear infrastructure facilities, which do not have the flexibility to avoid provincially significant features that may be possible for site based projects.

The policy planning and decision-making process should not exclude all potential sites and infrastructure corridors for economic development and investment, but rather must recognize that trade offs are sometimes necessary. In particular, the Panel heard clearly that municipal planning and decision-making is paying insufficient attention to the requirements for strategic energy infrastructure. Municipalities should be encouraged to consider future land use needs and energy infrastructure requirements to meet the peoples' need for heat, light and power in their homes.

The Provincial Policy Statement – Draft Policies (June 2004) section on Implementation and Interpretation states that "the applicable policies would be considered as part of the evaluation conducted under the relevant environmental assessment process" (p. 33). Clearly, in many EA projects, it will not be possible to comply with all Provincial Policy Statement (PPS) policies, most notably for linear facilities which will be compelled to impact provincially significant features at times. Thus, it is not clear how proponents are meant to "consider" the PPS in EA processes. Moreover, Section 1.6 of the draft PPS (Long-Term Prosperity and Social Well-Being) includes reference to "alternative energy systems" (includes renewables, and, presumably the required infrastructure). Again, it is unclear how support for such facilities is to be integrated into planning decisions.

Recommendation:

The PPS provide greater direction/clarity to EA proponents concerning how to consider the PPS in EA processes and most importantly identify the forum for resolution of conflicts with Provincial Policy. (See our Recommendations regarding One Project, One Process).

2.3 The Need for Policy Guidance Regarding Definition of Projects

Discussion:

Energy projects are inter-related – e.g. generation projects often spawn the need for new or reinforced transmission, roads or other infrastructure that is also subject to the EA process and other approval requirements. Typically, projects are defined by the mandate of an individual proponent or through a desire to "fall under the wire" for

Category B, C or individual EA status. The Province should take a leadership role in defining the specific projects entering the EA process given that the Province is defining the suite of projects that will trigger the EA process through its energy management initiatives and policy direction as noted above in (1).

Recommendation:

That the Province provide clear instruction and guidance on definition of projects/project bundles to be subject to the EA process when it provides direction to proponents on generation or transmission projects to be initiated that will trigger the EA process.

2.4 The Need for Policy Leadership on Controversial Issues

There are a number of controversial issues that emerge with energy projects on a repeat basis and in each case attract a significant workload for technical studies, assessment and consultation. Some of these include the biophysical impacts of technologies such as bird kills for wind turbines, and EMF for transmission facilities. Others relate to land use conflicts such as protection of wind and water resource areas. The necessity to conduct such studies can be a significant barrier to smaller projects with more limited available resources.

Proponents and the Panel believe that the Province should take a leadership role in facilitating generic work on these issues and providing a policy framework, guidelines and an even playing field for all proponents. We recommend that the Province commission research in moving towards resolution of these issues.

Recommendation:

That the Province undertake to commission research to provide resolution for a number of controversial issues that emerge on a repeat basis for the energy sector, slow down the decision-making process and waste limited resources. In some circumstances it may not be possible to go beyond identifying the appropriate level of study for particular types of projects and settings.

As has been the case for other sectors (e.g. landfill design guidelines), where appropriate the Province will then provide a consistent basis for decision-making by preparing Regulations or Policy/Guidance documents for use by proponents and stakeholders as they complete EAs for projects.

2.5 The Need to Elevate the Status of Energy in Provincial Policy

If the Province wants to ensure that energy projects are given weight in the consideration of all provincial goals and objectives, the Province should give energy projects a higher status in the Provincial Policy Statement. Energy could be elevated to the same status as other infrastructure.

Recommendation:

That the Province elevate energy infrastructure to the same level as other infrastructure (such as transportation) in the policies of the Provincial Policy Statement.

3. Administrative Integration and Regulatory Coordination

The Panel supports an integrative approach to planning and decision-making that facilitates the integration of those aspects of decision-making processes that affect the environment, according to shared principles, towards greater transparency in terms of what's expected from proponents, regulatory authorities and the public, with respect to:

- Detailed, technical standards and requirements that must be met,
- The process by which decisions will be made,
- Clear roles, responsibilities and accountabilities for proponents, for regulatory authorities and for the public,
- Eliminating unnecessary impediments to good projects, and,
- Promoting greater regulatory efficiency and effectiveness overall.

Appendix II provides a brief account of some of the numerous processes, regulatory approvals and permits potentially required for energy projects in Ontario. The proponent's management of these requirements includes posting of information and responding to submissions and requests for information in the many instances where some form of consultation is required.

As set out in our Terms of Reference, the Panel has identified recommendations for both short and long term improvements to the EA process as it applies to energy projects. This distinction is reflective of the time and effort that will be required to implement some of our proposed changes, and the need to provide relief from some of the inefficiencies of the current process during the interim period. The Energy Panel is strongly committed to the long term solutions as proposed – we see the short-term recommendations as part of a process towards longer term change. The shorter term recommendations are described in Section 5 below.

3.1 One Project, One Process

The Panel and stakeholders support a broad objective characterized as "one project, one process" to promote the review, assessment and approval of desirable projects through a single process by integrating administrative functions of multiple review and approval authorities, clarifying criteria and accountability for decision-making, and eliminating redundant and unnecessary steps and processes.

The Panel has considered a range of all the options along the continuum. At one end of the continuum is the option of the status quo -- that existing authorities in legislation are essentially left untouched but are given the resources and direction to facilitate the assessment process. Existing Ministries and agencies of the Crown could retain all the authorities and powers provided in existing legislation. Local decision making under legislation such as the Planning Act, for example, would continue.

On the other hand, the Panel discussed fundamentally changing the roles and responsibilities of all the authorities responsible for the approval and development of energy projects, and creating an entirely new structure. After considerable discussion, the Panel did not feel that either one of the extreme ends of this continuum would satisfy the goal of improving the assessment process.

Rather, the Panel decided that the most effective strategy would be the creation of a process coordinator. The office of the process coordinator would be responsible for administering an integrated and coordinated review, and for ensuring the assessment process accommodates public participation. Essential to the success of the process coordinator would be the authority to decide conflicts on matters of provincial interest.

Such a process would require participation by responsible authorities at the provincial and municipal levels. Each authority would produce a checklist detailing the review and approval process and standards and requirements to be met. Public expectations, industry compliance, corporate due diligence and public fiduciary obligations would then be met and discharged in one, single process.

Recommendation:

The Energy Panel recommends the creation of the office of a provincial process coordinator for energy projects to administer an integrated and coordinated review and assessment process that accommodates public participation. Further, the Panel recommends that an inter-agency commitment be made to place EA as a priority and to cooperate with the process coordinator in order to improve the assessment of energy projects in the province.

3.2 First in Line, Last in Line

The Executive Panel members proposed that Ontario's EA process should be "first in line", i.e., that a proponent must complete an EA process before commencing any other process.

In the case of environmental assessment for electricity projects this concept is difficult to apply. When dealing with project specific processes, most of the information required for the Environmental Assessment has to be developed for other approvals. Therefore, these other approval processes should proceed concurrently with the environmental assessment process.

Recommendation:

The Panel recommends that the environmental screening process continue throughout the planning process until the conditions required to issue a notice of completion have been met.

The panel also recommends the development of a straightforward check list and decision tree process that identifies government review authorities, that resides in one place and that includes municipalities, federal authorities, First Nations, stakeholders and the public.

3.3 Elevation Requests

Under Reg. 116/01, any person may request an elevation following the notice of completion of review. The Director has the option to:

- deny the request and allow the project to proceed;
- deny the request with conditions and allowing the project to proceed;
- refer the matter to mediation before making a decision;
- require the proponent to provide additional information and/or conduct further study before making a decision; or
- recommend to the Minister that the project be elevated to an individual EA.

The Director's decision can then be appealed to the Minister. However, the result, in the end, is either elevation to an individual EA, which involves another lengthy and expensive process, or eventually allowing the project to proceed.

Several stakeholders and members of the public have criticized this process primarily on the basis that it becomes, by definition "political", is open-ended and lacks transparency.

Proponents are concerned about the open-ended timelines for decision-making, and the possibility of entering into a seemingly endless loop of studies and further elevation requests. The affected public are often concerned that imposing conditions or ordering additional studies does not necessarily give them the opportunity to know that their concerns have been taken into account; nor is there any quick way to obtain a decision that a project should not proceed.

Most approvals required for projects to proceed incorporate an appeal process that includes specific timelines and involves a process in which all participants are "heard" by the decision-maker. Decisions are made based upon the evidence and opinions put forward by the various interested parties, all of which are available to others in the process.

Recommendations:

To deal with the problems arising from elevation requests, the Energy Panel recommends:

1. That the Ministry of Environment eliminate the elevation request process, placing the responsibility for public consultation, appeals, recourse and redress in an adjudicated process. This would have the benefit of de-politicizing the approval process and eliminating the single most significant source of political risk and investment uncertainty. This would result in approval or denial of the project.

2. Processes like coal in Schedule C such as nuclear and petroleum coke would be subject to full environmental assessment.

This is consistent with the Executive Panel's "statement of challenge" which seeks to make the assessment process independant, non-biased and apolitical.

4. The Need for Better Transparency, Greater Disclosure, and Clearer Roles for Stakeholders

Greater transparency promises to improve stakeholders' understanding of legal and regulated requirements, to remove undue hurdles and barriers to entry for smaller enterprises and to reduce regulatory burden and cost for proponents, regulatory authorities and the public.

Better disclosure promises to promote better information management and project tracking, to enhance and facilitate public decision-making processes, and to provide better oversight and compliance risk management for proponents and regulators.

In the Panel's view, greater transparency and disclosure is required in three primary areas:

1. Transparency of regulatory requirements. standards, processes for proponents, and standardized processes wherever possible;
2. More comprehensive publication of project plans, applications, approval processes and provisions for consultation, including opportunities for appeal, recourse and redress;
3. Clear accountability, analytical rigour and rational compliance enforcement by MOE and other regulatory authorities.

The first requirement for enhanced transparency and greater disclosure is improved information and improved information technology. Much information seems to be required and is collected by regulators, but not so much is published. The Environmental Bill of Rights Registry cans not, as currently structured, produce a comprehensive record of project and process information. Nor does the Ministry's environmental information site provide a complete story. A lot of information is available publicly if requested directly, but the requestor needs to know what he or she is asking for and many such requests are subject to the delays and costs caused by reviews and consideration under Freedom of Information laws and guidelines.

In the years since the EBR Registry was established, information technology has evolved significantly.

Recommendation:

The Panel recommends that the province and municipalities use available web-based information management applications to create an environmental assessment information registry and management system. Such a registry will improve the quantity, timeliness, transparency and quality of the information and better inform policy planning, assessment and decision-making processes.

4.1 Better Public Engagement and Consultation

The ultimate objective is better and more comprehensive information and more effective approaches to increasing awareness both in terms of processes to be followed, requirements to be met, opportunities to participate, issues under consideration, public interest objectives and principles guiding decision-making, including criteria and time lines.

Current standards, rules and guidelines set out minimum standards and requirements for notification and publication of information about projects and processes. Different agencies have different processes. At the provincial level, the process at the Ontario Energy Board is probably the most highly evolved in terms of the detailed guidance provided to proponents, the specificity of the requirements and the benefit of years of experience under a relatively consistent review and approval regime.

Many stakeholders commented on what would be appropriate standards for public notification and consultation and how to measure whether the standards are being met. There is a high level of variation among projects in terms of complexity, environmental effects and public interest, and it would be difficult to establish more prescriptive requirements in the Guide. The Guide already encourages proponents to take advantage of opportunities to integrate the consultation requirements of different approval processes, and again circumstances are very specific to each project.

Some proponents were particularly concerned that commenting agencies and the public are able to severely impact the viability of good projects by manipulating the consultation and elevation provisions in the Guide. We have made suggestions in the following Section 5 for changes that can be implemented in the short term and that would clarify the role of commenting stakeholders.

Recommendation:

That effective consultation provisions be incorporated into one window process through the office of the process coordinator to enhance public consultation and to promote the education of the public about the environmental assessment process.

5. Refinements to the Guide to the Environmental Assessment Requirements for Electricity Projects

EA requirements for the energy sector went through an extensive process of consultation and change in 2001, resulting in the Electricity Projects Regulation and Guide, and further consultation in 2003. The panel's original inclination towards a pragmatic approach to recommend incremental and positive changes to the regulation itself was endorsed by participants representing a range of perspectives at the energy sector workshop.

The following changes are intended to bring about improvements to the electricity screening process, and can be implemented in the short term. A number are proposed as interim measures to improve the operation of the process set out in the Guide while longer term solutions are further researched and implemented. They respond in large part to practical issues encountered in implementing the Guide for Category B projects. They are intended to remove ambiguities and unnecessary process steps while maintaining the level of environmental protection and the effectiveness of the consultation requirements provided for by the Environmental Screening Process.

While we believe that none of the changes would require modifications to the Environmental Assessment Act, minor changes to the Electricity Projects Regulation 116/01 would be required in some instances. The recommended changes are described generally in the order of the relevant sections as they appear in the Guide.

5.1 Improvements to Introduction

The description of the context for the Environmental Screening Process in the Guide should be updated.

Recommendation:

The Introduction would be supplemented by a summary of the process by which the further refinements to the process were made through the Minister of the Environment's Advisory Panel on Improvements to the Environmental Assessment Process.

5.2 Clarity on Blended Fuels

The Regulation and Guide should provide clarity as to how generation projects using blended fuels should be classified.

Recommendation:

The Glossary in Regulation 116/01 should be modified so that that where the electricity generated by a facility would be derived from a second fuel source in addition to the primary fuel source, the categorization of the project must be based on the prescribed threshold for the fuel source that is subject to the most rigorous environmental assessment processes. This requirement should also be described in the Guide.

5.3 Projects with no Negative Environmental Effects

Projects to improve energy efficiency at generation plants that increase nameplate capacity but have no negative environmental effects should not be required to go through the screening process.

Recommendation:

The Regulation and Chart 1 in the Guide (Section A2 – Project Classification) should be modified so that energy efficiency projects that do not increase total annual air emissions or other negative environmental effects but increase the name plate capacity of a generation plant should be classified as Category A projects and not subject to the Environmental Screening Process or individual EA.

5.4 Petroleum Coke

The appropriate category for an electricity project type that uses synthetic or petroleum coke as a fuel should be specified.

Recommendation:

The Regulation and Chart 1 should be modified so that petroleum coke is included with coal as an Electricity Project Type that requires individual EA in all cases.

5.5 Unspecified Technologies

At present, "any technology using an energy source not designated in the Regulation" is placed in Category A. Unspecified technologies and fuels therefore have no EA requirement, unless they are designated by the Minister in which case they require an individual EA. This has been considered a loophole by some. However, the effect has been to increase delays and uncertainty.

Recommendation:

The Regulation and Guide should provide for a formal review process to assign unspecified generation technologies to an appropriate category.

5.6 Refinements to the Environmental Screening Process

To avoid misunderstandings among stakeholders who may be more familiar with other Ontario EA requirements, Section A6 of the Guide should be clear in specifying what the

Environmental Screening Process does not require, as well as describing the Environmental Screening Process. It should also identify energy planning issues that are addressed by government policy in response to the recommendations in Section 2 of this report.

Recommendation:

The Overview should specify that the Environmental Screening Process does not require the proponent to identify or describe alternatives to the undertaking (such as alternative fuels or technologies) or alternative methods of carrying out the undertaking (including alternative sites) for Category B electricity generation projects.

5.7 Role of Stakeholders

The Guide should more clearly set out the role of stakeholders in the process by expressing an expectation that they will identify their issues early in the Environmental Screening Process and participate in efforts to resolve issues.

Recommendation:

Section A.6.2, Consultation should state that the requirement for proponents to consult on the screening criteria provides an important opportunity for stakeholders to raise issues and concerns early in the process. If a stakeholder does not disclose issues until late in the process or chooses not to participate in efforts by the proponent to resolve issues, this will be taken into consideration in the conduct of any appeal mechanisms that are incorporated into the modified Guide.

5.8 Agency Consultation

The Guide should describe enhanced arrangements for agency consultation arising from the Minister's decisions on the Panel's recommendations.

Recommendation:

Subsection A.2.2, Agency Consultation, should include a description of the coordination committee of agencies involved in the review of Category B energy projects recommended elsewhere in this Report, and timelines for the provision of requested information and the review of pre-circulated materials. The timelines would be established based primarily on proponents' need for timely completion of Screening and Environmental Review Reports, and on resource considerations to be established among reviewing agencies.

Our Report suggests in Section 3 that a process coordinator should be assigned to act on behalf of proponents to facilitate provision of information and review of materials. If it is implemented, this arrangement should also be described.

5.9 Requirement for a New Notice to Transfer from Screening to Environmental Review

At present proponents are permitted to transfer from the Screening to the Environmental Review process without completing a Screening Report, but the requirement for a new notice to enable this takes has no real benefit, takes additional time and can create mistrust among stakeholders that the Screening that they were asked to respond to has been somehow interrupted by the proponent.

Recommendation:

Subsection A.6.2.4, Mandatory Notification should be modified to reflect new provisions in Parts 2 and B3 that would allow a proponent to choose to embark on a combined Screening and Environmental Review at the beginning of the Environmental Screening Process. This will require a Notice of Commencement of a Combined Screening and Environmental Review and public and agency review of the screening checklist within 30 days. No new notice would be required to announce the commencement of the Environmental Review portion of the process. This amendment will allow proponents to embark on a more rigorous Environmental Review process from the outset if they so choose, while still requiring a description of the project and the use of the screening checklist as an initial tool to identify issues and concerns. The proponent should be required to provide the circulated and final (i.e. with any modifications arising from submissions received during the initial 30 – day consultation period) screening checklists as appendices to the Environmental Review Report.

5.10 Public Availability of Reports

It is important with respect to the Energy Panel's principle of transparency that proponents make Screening Reports readily available to the public in order to maintain an open and collaborative process.

Recommendations:

If there is to be any delay in implanting a web–based registry for energy and other EA projects as recommended in Section 4 of this Report, the Guide should specify in Subsection A.6.2.5 Documentation that Screening Reports and Environmental Review Reports are part of the permanent public record. In addition to keeping the Report in its own files, the proponent must make arrangements with a municipal office or other suitable repository in the locality of the project where the Report will remain available for public review and may be reproduced (at the cost of the reviewer) for a reasonable time.

When a web – based EA information registry is implemented as recommended in Section 4, it should be described in this Section of the Guide.

5.11 Likelihood of Effects

The evaluation of the significance of an environmental effect should include consideration of the likelihood of the effect.

Recommendation:

In Section B.3.2, Conducting an Environmental Review, "Likelihood of the effect" should be added to the criteria for assessing significance.

5.12 Standards and Guidelines

The Guide does not clarify that meeting a standard or guideline does not necessarily mean that there is no environmental effect.

Recommendation:

Section B.3.2 should include a discussion of the use of regulatory requirements such as noise and air quality standards in assessing the significance of effects. It should state that while such standards are often helpful in determining significance, the achievement of a standard does not necessarily mean that there is no net effect. The criteria for assessing significance should be consulted in deciding the actual effect in each case.

5.13 Elevation Requests

The project elevation provisions in Section B.4, Changing the Project Status and Process Completion, generated a greater degree of dissatisfaction among stakeholders than any other provision in the Guide. Proponents considered that the process is very open ended from a timing point of view and that decisions are not made within the timelines indicated by the Guide. They felt that this threatens the financial viability of good projects and has enabled some participants to abuse the process by demanding unreasonable concessions in exchange for withdrawing an elevation request. Others at the stakeholder workshop were equally dissatisfied with the elevation process, saying that few requests are granted, that the process is not transparent and that that those who requested elevation did not feel their views had been heard.

Recommendation:

Elsewhere in this Report the use of hearings or other proceedings – which may be combined with proceedings for other approvals – are discussed as a way of resolving this concern. If it is not possible to incorporate this approach into the first reiteration of the Guide, urgent attention must be given to streamlining this process in the interim. First, consistent with the EA Advisory Panel Challenge Statement, the process must be made "independent (non – biased and apolitical)".

A first step in implementing this approach in relation to elevation requests would be to delegate the Minister's decision to elevate a project to the Director and to remove the opportunity for the Minister to review a Director's decision, and we recommend this as a priority[65]. There may be resource implications for ensuring that the Director meets the timeline for his or her Decision and this cannot be addressed in the Guide, however the need to meet timelines – even if they are longer than currently provided for – is essential to all parties' confidence in the process.

There should be only one opportunity for the Director to request further study, and if the information received is not sufficient the elevation request may be approved.

The Guide should confirm that the provisions (not just the "principles") of Section 8 of the EA Act apply to mediation under the Environmental Screening Process, including the determination of a timeline within a maximum 60 days for a mediator to produce a report, except that the decision maker is the Director.

5.14 Frivolous and Vexatious Elevation Requests

Some stakeholders also requested that criteria be added to guide the Director in deciding whether an elevation request is "frivolous or vexatious" or submitted with the intent of delaying a project.

Recommendation:

While it is difficult to define criteria that would be useful in all circumstances, the Guide should clearly state that the Director will not consider an elevation request unless it is received by both the Director and the proponent within the 30 – day review period, providing the proponent meets the notice requirements. Also, the nature of the requesting party's involvement in the consultation process for the project should be included in the bulleted list of issues for consideration by the Director in making a decision, as discussed earlier in this Section. When the elevation request process is replaced by a hearing or other process this list of issues should be included in the matters to be considered by a hearing or other adjudicative process in deciding on an appeal.

Figure 3 would be amended to reflect the recommended changes to the elevation process.

5.15 Monitoring Provisions

More stringent monitoring provisions are required to ensure that proponents comply with the Electricity Regulation including compliance with commitments and conditions contained in Screening and Environmental Review Reports, and that the Regulation and Guide continue to be improved in response to changing conditions.

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[65] In the view of one Panel member, a major loophole in Regulation 116 is its failure to subject petroleum coke and nuclear facilities to Ontario's environmental assessment process. This loophole is particularly conspicuous in light of the fact that the Regulation subjects a 5 Megawatt or greater oil-fired power plant to an individual environmental assessment. As long as this loophole persists, it is the recommendation of this Panel member that citizens should retain the right to request the Minister to subject petroleum coke and nuclear facilities to an individual environmental assessment.

Recommendation:

Section B.7, Ministry Monitoring should require MOE to develop and approve a plan for proponents to monitor compliance with the environmental screening process and for MOE to monitor the performance of the Guide and Regulation, within a reasonable period of say one year. This requirement would be comparable with conditions currently applied by the Minister of the Environment to the approval of Class Environmental Assessments.

6. Proposals for Process Integration for Hydroelectric Projects Section A.4 of the Guide

Hydroelectricity (or waterpower) projects in Ontario are subject to myriad federal and provincial legislative and regulatory requirements with environmental requirements and objectives that must be coordinated and harmonized in order to ensure new developments and redevelopments contribute to the province's renewable energy targets and timeframes. Notably, there is no minimum "capacity" threshold below which a new project would be exempt from the requirements of regulation 116, in contrast, for example, with other forms of "clean" generation.

Moreover, upgrades of existing facilities resulting in a capacity increase of 25% or greater are also subject to EA requirements of the regulation. In this regard, capacity increases of less than 25% but resulting in a new disposition of Crown resources are subjected to a separate (and different) EA process led by the Ministry of Natural Resources (Resource Stewardship and Development Class EA). Additionally, any redevelopment, regardless of % increase that results in a new capacity greater than 200MW is subjected to a full EA.

Recommendations:

In order to address these anomalies for hydroelectric projects, the Energy Panel recommends:

Regulation 116 and the November 1, 2004 federal/provincial cooperation agreement be the basis for environmental reviews and approvals for waterpower projects and that such approvals be deemed to satisfy the environmental objectives of other directly relevant provincial legislation including, but not limited to, the Lakes and Rivers Improvement Act and the Public Lands Act.

Projects such as minor equipment replacement and upgrades that are exempt from the requirements of Regulation 116 (as amended) should not be subject to "residual or default" provincial EA requirements (e.g. as Ministry of Natural Resource's Resource Stewardship and Facility Development Class EA).

Upgrades of existing waterpower facilities be treated equitably, regardless of the resulting installed capacity, acknowledging that there are specified federal EA requirements for a "Comprehensive Review" in this regard. Specifically, an upgrade of an existing facility that results in an installed capacity of 200MW or more should not be subject to a full EA. Rather, the thresholds for increasing capacity (i.e. 25% requires a Screening) should be applied.

The basis for thresholds under which new projects are exempt from provincial environmental assessment requirements should be made consistent.

7. Conclusion: The Need for Lasting and Positive Improvements

The Panel has focused on principles, policies and recommendations that seem most promising in terms of delivering incremental positive improvement in environmental assessment processes. The panel also recognizes that environmental law and regulation is complex, multi-faceted and the responsibility of numerous regulatory authorities at the federal, provincial and municipal level.

Since the introduction of EA concepts into law in the early 1970s, much has been learnt. All agree that the current EA process is better than it used to be and the Ministry of the Environment and the Canadian Environmental Assessment Agency have both demonstrated commitment to continue to seek improvements through consultation with stakeholders.

We believe we have identified a number of simple and quick things that could be changed to improve the process immediately. We have also spent much time discussing more profound changes that might have the potential to deliver a significant step-change in a positive direction. Such changes will require policy leadership. We would also expect that any of these fundamental changes would undergo considerable additional research, analysis and consultation before any decisions were to be made. We do not wish to see an upheaval in basic principles at this moment and are mindful of immediate issues facing the government and the energy industry in planning for the future and delivering new energy projects in support of the government's objectives for infrastructure renewal.

Early, the Panel agreed that any recommendations for changes to environmental assessment processes should create opportunities for improvements that benefit proponents, regulatory authorities, the public and the environment. We also agreed that considering the recent experience of proponents, review agencies and the public, we would look for practical opportunities to make incremental and positive changes. We do not seek to make change for its own sake, nor to recommend changes that provide no benefits to the environment.

Energy Sector Panel Membership

Paul Norris
Mr. Norris is President of the Ontario Waterpower Association (OWA). The OWA was

established to provide a collective voice for waterpower interests in the province. Together, the OWA's founding members represent more than 95% of the waterpower generating capacity in Ontario: Ontario Power Generation, Great Lakes Power, Algonquin Power, Beaver Power, Regional Power, Seine River Power, Orillia Power, Abitibi Consolidated, and Inco.

Adam White
Mr. White is Vice President of Public Affairs and External Relations with the Ontario Energy Association. The Ontario Energy Association represents businesses serving natural gas and electricity customers in Ontario. Members include natural gas and electricity transmitters and distributors, generators, marketers, retailers, appliance and equipment manufacturers, contractors and suppliers, and firms supplying legal and consulting services to the industry.

Prior to joining the OEA in 2003, Mr. White worked for Mirant Canada Energy Marketing and TransAlta Energy Corporation in Ontario's electricity industry. From 1994 to 1999, Mr. White worked in the Ontario Public Service, at the Ministries of Environment and Energy, and Energy, Science and Technology.

Steven Rowe
Mr. Rowe is an environmental planner, and Chair of the Cleaner Energy Table. His background in environmental assessment includes helping MOE to develop the electricity screening process under Regulation 163, and assisting with the implementation of the process for a wind farm proponent. Mr. Rowe is the President of the Ontario Society for Environmental Management.

Jack Gibbons
Mr. Gibbons is the Chair of the Ontario Clean Air Alliance and Director of Pollution Probe's Energy Programme. In the past, he has been a staff member at the Ontario Energy Board and the Toronto Hydro Commissioner.

Ann Joyner
Ms. Joyner is a planner and Partner with Dillon Consulting Limited and has worked on numerous environmental assessments for the electricity and other sectors. The firm is currently completing EAs for wind farms and transmission facilities as well as planning approvals for several district energy facilities. She has been a part-time professor at York University teaching planning and environmental assessment for fifteen years and contributes regularly to the environmental policy sub-committee for the Ontario Professional Planners Inst.

Cathy Spoel
Ms. Spoel is a part-time member of the Ontario Energy Board. She is a lawyer with more than 15 years of experience in administrative law, with a focus on land use planning, environmental, municipal and energy law.

APPENDIX 3: TRANSPORTATION TABLE REPORT

(Formatting of below Sector Table Report may be different than originally submitted)

REPORT OF THE TRANSPORTATION PANEL

November 19, 2004

1. Introduction

Since the Transportation Panel was first convened in September 30, they have looked intensively at the environmental assessment process as it affects transportation and transit projects and facilities in Ontario.

As one of their primary concerns, the Transportation Panel identified the inequity in the environmental assessment process between the creation of new municipal transit systems and the construction of new roads. The Panel found that as the practices and procedures of the environmental assessment process evolved, those that applied to transit lagged behind those that apply to building roads. Consequently, municipal transit systems are currently put to a higher test than other transportation projects under the environmental assessment process, as it is currently practised. The Transportation Panel has made several recommendations that they believe will level the playing field between municipal transit and road projects.

The Transportation Panel has also identified other impediments to obtaining timely approvals for projects. The Panel's recommendations are directed at improving the environmental assessment process by the integration of approvals under the Planning Act and the Environmental Assessment Act, clarifying the procedures around "bump up" or Part II Order requests, addressing the problems of scoping in the Terms of Reference, enhancing the Ministry of Environment's capacity to handle the EA process and providing for long-term transportation planning.

2. Background and Methodology

Environment Minister Leona Dombrowsky appointed an Executive Panel and three sector panels, including one for transportation and transit, to provide "expert advice and guidance on improvements to Ontario's Environmental Assessment process" and to support the "...government's waste diversion and waste management, clean energy and transportation objectives". The members of the Transportation Panel are identified in Appendix I.

The members of the Transportation Panel first met with members of the Executive Panel and the Ministry of the Environment on September 30 and were provided with materials and guidance by the advisory panel. The Transportation Panel were asked by the Executive Panel to identify "quick fix" improvements to the environmental process that could be implemented quickly. The Transportation Panel identified two items for the Executive Panel which were included in the Interim Report to the Minister on October 8, 2004 (See Section 3 – Quick Fixes).

With respect to other improvements that might be implemented, the Transportation Panel developed position papers and held discussions on what improvements to the Environmental Assessment process would be most appropriate for their sector in a series of telephone conference calls and face-to-face meetings. These discussions took place on 6 different occasions – October 5, October 7, October 15, October 22, October 29 and November 8.

The Transportation Panel through series of discussion papers identified the issues for their sector and developed their recommendations. After these initial discussions, the issues and proposed solutions were put forward in a workshop held November 10 at the Ontario Heritage Centre, and attended by representatives of different umbrella groups with a specific interest in transportation issues. These included municipal representatives, engineers, planners, and interested members of the public. The workshop provided the panel members with interesting perspectives and suggestions, many of which aligned with the Panel's recommendations. Summary notes taken at the workshop are included in Appendix III. Further to the workshop, several participants submitted papers to the Ministry of Environment and to the Panel. These submissions can be found in Appendix IV of this report.

The Panel met on November 17 after the workshop to consider the feedback from the workshop participants, and to finalize their recommendations to the Minister and to the Executive Panel. This report represents the deliberations of the Transportation Panel, the consideration of the consultation with the broader group of participants and the Panel's best advice on how the environmental assessment process can be improved for the transportation sector.

3. Quick Fixes

The Transportation Panel made two recommendations to the Executive Panel for immediate improvements to the environmental process. These were:

a. That "bump up"/Part II Order provisions for traffic calming be removed from the environmental assessment process; and, that requirements for advertising traffic calming proposals be amended so that municipalities have the discretion to develop their own public notice proposals;

b. That transit projects be covered under the existing MEA Municipal class environmental assessment process by changing the definition of "linear paved facility" so that it means "facilities which utilize a linear paved surface including road lanes, or lanes in an exclusive right-of-way for HOV lanes, bus lanes or transit lanes". The present definition is restricted to "facilities which utilize a linear paved surface including road lanes, HOV lanes, bus lanes or transit lanes".

With respect to the first recommendation, the Municipal Engineers Association (MEA) had prepared a clarification regarding public notice for advertising traffic calming projects. The purpose of the change regarding public notice was to allow municipalities to conduct effective public notice without excessive costs. While this would apply to all Class EA projects, it was considered to be especially helpful with traffic calming projects. The Ministry approved the clarification, and agreed that proponents could be responsible for determining the appropriate level of notification consistent with the provisions for public notice in the Municipal Act and the Planning Act.

The MEA and the Toronto Transit Commission had also previously asked the Ministry to approve a minor amendment that would allow additional transit uses to be covered under the existing Municipal Class Environmental Assessment. The notice of this proposed amendment was subsequently posted on the EA Activities Web Site for a 30 day comment period ending November 15, 2004. The Ministry will be considering the comments and making a decision whether to issue a Notice of Amendment.

The Transportation Panel was encouraged that, with respect to these two initial recommendations, one was approved and the other in the process of being resolved.

4. Recommendations of the Transportation Panel

After a productive debate among the members of the Transportation Panel, and having considered the views of a broad group of people with an interest in the transportation sector, the Transportation Panel offers the following table as a reflection of their discussions. The Table presents the issues, the discussion and the Panel's final recommendations on the major issues that were identified.

EA REVIEW TRANSPORTATION PANEL RECOMMENDATIONS

TOPIC	DISCUSSION	RECOMMENDATION/OBSERVATION
Incorporating Transit into the Class EA System	**A significant process inequity exists between municipal road projects and all transit projects. Most road projects are undertaken within the context of the Class EA approvals system. In contrast, transit projects must undergo extensive individual EA approvals. Therefore, to address this inequity,**	**Rec. 1.1 That transit and related projects be incorporated within the existing Municipal Class Environmental Assessment system within two years.**

	the Panel feels that transit and transit-related projects should be incorporated into the Municipal Class EA.	
	In Regulation 334 of the EA Act, there are exemptions currently allowed to the EA process for roads that do not apply to transit; transit projects should be allowed the same exemptions.	Rec. 1.2 That pending implementation of Rec 1.1, transit facilities should be included within the list of exemptions under Regulation 334.
	In Regulation 334, an undertaking by a municipality is exempt from the "full" EA process under a number of conditions. Two of these are as per Clause's 5 (2) (a) and (h), where a project is exempt if it costs less than $3.5 million or if the work is provided for in a subdivision agreement. However, as per Clause 5 (3), these exemptions do not apply, "*in respect of a new bus service on an exclusive right-of-way or a new rail transit system".* Note that "exclusive right-of-way", as defined in Clause 1 of the Regulation, includes a "reserved bus lane on an existing road".	Rec. 1.3 That the exemption limit be increased significantly from the current $3.5 million limit to $10 million for transit projects.
	There appears to be no	

	rationale as to why the $3.5 million exemption limit which has stood for many years has never been updated to reflect today's capital program cost realities. In the interim period before transit becomes part of the Municipal Class EA, transit projects can be facilitated by immediately amending the MEA Class EA to include municipal vehicles (buses and streetcars) operating on municipal streets. This amendment should include ancillary facilities (such as including stops, stations and bus looping facilities).	Rec. 1.4 That transit projects that utilize municipal vehicles (buses and streetcars) operating on municipal streets and ancillary facilities be covered under the existing MEA Municipal Class EA process. Ancillary facilities would include those that are required for the normal operation of the system including stops, stations and bus looping facilities.
Integration of Planning and EA Decision-Making	The Municipal Class EA provides proponents with the option of integrating or coordinating Class EA and Planning Act requirements to help streamline the planning and EA approvals processes (ref. Section A.2.9 of Municipal Class EA - Integration with the Planning Act).	Rec. 2.1 Make greater use of Section A.2.9 of the Municipal Class Environmental Assessment to harmonize planning and EA approvals and to avoid a second approvals loop, thus saving time and work for the public, proponents, councils and consultants. Rec. 2.2 Integrate consideration of Provincial Policy Statements and approved planning policy documents into EA decision-making to ensure societal priorities are reflected in EA process outcomes.
Part II Orders, known as Bump	There is insufficient clarity regarding	Rec. 3.1 That the circumstances and procedures under which the MOE

up Requests	conditions under which a "bump-up" request (Part II Order) will be granted. There is a need for more explicit conditions under which the province would order a "bump-up" of a Class EA project in response to a request from the public. At present, it is not uncommon for someone who does not agree with a decision of Council to request a "bump-up" in an attempt to have a higher level of government overturn a municipal decision. This can create unnecessary delays while the matter is being considered by MOE. The Ministry of Environment can take a significant amount of time to consider "bump up' requests, sometimes beyond the prescribed 66 days in the MEA Class EA. This practice has the potential to result in delays and extending the time frames for decisions on projects. The MOE is a stakeholder in the decision making process since one of its main roles is to protect	would consider there to be sufficient justification to grant a "bump up" request be fully documented. Rec. 3.2 That precise deadlines be established and adhered to within which the MOE must render a decision on all Part II order requests. Rec. 3.3 That the Part II Order process be taken out of MOE whose responsibility it is to protect environment and be given to an impartial body established to oversee EA decision-making process and adjudicate Part II Order requests.

	the natural environment. The MOE is somewhat compromised when it comes to fulfilling the role of independent adjudicator of environmental issues.	
Responsibility of the Public with respect to Part II Order Requests	The Municipal Class EA states that any member of the public has a responsibility to provide a certain amount of information when making a Part II Order request. They are required to demonstrate that their request is not frivolous with the intent only to delay the project. Traditionally, MOE staff have placed the onus on the proponent to demonstrate that their planning process has complied with the Class EA process but do not require members of the public to substantiate their Part II Order requests. A screening, by MOE staff, based on clear and accepted criteria to separate legitimate environmental concerns from frivolous or philosophical opposition, would be advisable. There is no mechanism in place such as the one	Rec. 3.4 That the MOE consider establishing a mechanism to declare non bona fide requests for bump ups frivolous and vexatious. Rec. 3.5 That a "how to" guide be published by the MOE which gives direction to the public on their roles, responsibilities and the procedures for requesting a bump up.

	found under the planning related legislation to enable the Minister to determine whether a bump up request is frivolous or vexatious.	
Scoping and Range of Alternatives in Individual EAs	Some proponents undertake individual EAs that are very narrow in terms of scope, needs justification, public involvement and consideration of alternatives. Some proponents propose projects that satisfy their particular mandate without regard to other solutions outside their primary mandate.	Rec. 4.1 Establish EA practice guidelines which require proponents to meaningfully consider all reasonable alternative solutions irrespective of their agency/business mandates. Rec. 4.2 Proponents should not be required to devote considerable resources to dealing with unreasonable alternatives. Rec. 4.3 Preferred alternatives can include hybrid options that provide for a combination of alternatives. Rec. 4.4 In EA's spanning multiple jurisdictions and mandates, multi disciplinary EA teams should be established early in the process to professionally consider all alternatives.
Creation of a five class system within the Municipal Class EA including a new class of projects which would involve public notice but not an appeal to the province	"Class EA" processes already exist but are either not consistently applied across different "Sectors" or simply do not exist for some "Sectors". In addition, there is often "too much process" where a project has significant	Rec. 5.1 Adopt a five "Class" framework for guiding EA process reviews. Rec. 5.2 Revise existing Class EA process documents to reflect the new five Class system. Rec. 5.3 Create an additional class of projects under Class 2 which would require public notice but would not allow an appeal to the province Rec. 5.4 Consider the following

	benefits and minimal environmental impacts. Secondly, there are numerous projects where environmental considerations are minimal and the undertakings are virtually all of local or neighbourhood interest – yet appeals must be directed for remote consideration by the Minister of Environment and the Ministry staff. Notwithstanding, it is accepted that the consultation format characteristic of the existing Class EA process is universally accepted as a means of doing business in modern society; therefore, the essence of the existing Class EA processes remains valid. A five "Class" framework has been tabled for consideration by the EA Sector Tables. The framework merits comparison with the existing Class EA framework and has been reviewed by the Transportation & Transit Sector Table.	approach in refining the MEA Class EA three "Schedule" framework to the new five Class format: Class 1 - generally includes normal or emergency operational and maintenance activities; the environmental effects of these activities are usually minimal and therefore these projects are pre-approved. Essentially existing Schedule 'A'. Class 2 - generally includes rebuilding facilities with minor changes or introducing operational changes which are either consistent with provincial policy or not covered by provincial policy; the environmental effects of these activities are usually minimal and confined locally; therefore these projects are approved locally after public input. Possibly a new Schedule, generally between existing A and B should be created. Class 3 - generally includes improvements and minor expansions to existing facilities. There is the potential for some adverse environmental impacts of interest to the province; therefore, the proponent is required to proceed though a screening process including consultation with those who may be affected. Similar to existing Schedule 'B' but projects fewer in number, reflecting the creation of "Class 2". Class 4 - generally includes the construction of new facilities and major expansions to existing facilities. These projects proceed through the EA planning process as

		outlined in the existing Class EA, Schedule C. Class 5 - generally includes construction of major new facilities and major expansions with the potential for significant impact to the environment. Effectively the existing individual EA process.
MOE Guidance on use of Municipal Class EA	While the MOE ultimately approved the Municipal Class EA, MOE staff have been reluctant to provide advice on how to apply the Class EA process to individual projects, although there is some variance across the province. While it is true that the Class EA process is a self-assessment process to a large degree, if a Part II Order request is made at the end of the MOE study, staff and the Minister will make the judgement on whether or not the process has been used correctly. In some cases, a significant amount of time and money could be saved if MOE staff would provide guidance on request, prior to the end of the study.	Rec. 6 That the Ministry of Environment, having jurisdiction over EA issues, should take a more active role in ensuring that municipalities have a clear understanding of the EA process in Ontario, and that they have access to adequate resources to assist them in complying.
Need for More EA Training Resources	Previously, MOE had training programs for the Class EA system. MOE ended its training programs. MOE does not 'own' the Municipal Class EA system since	Rec. 7.1 MOE should provide appropriate resources for course development and training for existing and future EA practitioners. Rec. 7.2 That MOE and MEA collect best practices related to the Class

	they view it as belonging to the MEA and municipalities. While the MEA bridges this gap by providing training for municipal staff, there is a need for more course development resources and EA training for practitioners and the public, since the MEA is a non-profit volunteer organization with limited resources.	EA process and make them available to practitioners and the public.
MOE Technical Reviews	On certain complicated projects, MOE staff conduct technical reviews of components of Class EA studies. Certainly, as a review agency, this is an appropriate role for MOE staff. However, concern lies in the timeliness of MOE's review. Rather than actively participating throughout the process, technical reviews frequently occur when all technical work has been completed, and the Environmental Study Report has been filed in the public record. This has resulted in delayed approvals and additional costs being incurred on these projects.	Rec. 8 MOE staff should be encouraged to actively participate in the entire process on more complicated projects to provide support for proponents in terms of process.
Increase MOE	Currently MOE is not	Rec. 9.1 MOE should become more

Resourcing of EA Program	providing the resources needed to support its EA program; nor does it have any contemporary practice guidelines to assist practitioners in implementing the EA Act. Occasionally, different MOE staff provide inconsistent EA related advice to practitioners on similar projects. The current EA program is struggling to keep up with bump-up requests and individual EAs.	inclusive in its consultation with all affected stakeholders in all EA processes and should lead the development of clear and consistent EA policies and provide sound EA practice guidance for EAs. Rec. 9.2 MOE should establish regular and meaningful communications with respect to current practices, policies and procedures with EA practitioners and proponents. For example, a document equivalent to the former EA Update should be circulated quarterly in hard copy or email format. Rec. 9.3 MOE should establish an excellent website to which practitioners can easily refer.
Meaningful Public Participation	Proponents of highly complex individual EAs sometimes do not recognize the needs of the affected stakeholders in relation to their ability to obtain and comprehend complex materials and make an informed response.	Rec. 10.1 Define minimum public participation thresholds and time frames for individual EAs in a manner that: 1) meets local community needs, and 2) are reflective of project complexity. Rec. 10. 2 That MOE develop practice guidelines which encourage proponents to consult as early as possible in the EA process and give direction on how to be responsive to changes in the process as they evolve. Rec. 10.3 That MOE prepare a best practices document on effective public consultation with respect to EAs and make it available to EA practitioners. Rec. 10.4 That environmental

		assessment notices and reports be published in jargon-free, plain language.
Incorporating Transportation Master Plans into the EA process	When evaluating transportation infrastructure projects, alternatives to the undertaking including transit (such as increased service) and Transportation Demand Management (TDM) strategies cannot always be effectively considered in a corridor. Due to the diverse nature of trip origins and destinations in a community, transit improvements need to be implemented on a broader basis to be effective as a transportation alternative. (Exceptions would include implementation of higher order transit.) These types of strategies are generally described within a community's Transportation Master Plan. Currently, the Master Plan process does not receive approvals through the EA or Planning Act. It would be beneficial for transportation network strategies such as Transit and TDM to receive recognition	Rec. 11.1 That Transportation Master Plans be filed for approval using the Class EA process so transportation network strategies such as improved transit service and TDM initiatives are considered and approved on a system wide basis. Rec. 11.2 That municipalities should include their Transportation Master Plans in their Official Plans. Rec. 11.3 That the Ministry of Environment and the Ministry of Municipal Affairs provide joint guidance on how to plan for and protect future transportation corridors under the EA Act and Planning Act. Rec. 11.4 That the MOE investigate the means of expediting transportation projects which implement Transportation Master Plans and Official Plans and policies undertaken in a manner consistent with recommendations 11.1 and 11.2.

	through an approval process, so they become the starting point or base case against which other alternatives are measured.	
Modifications to the Individual EA Process	The requirement for a minister-approved Terms of Reference for Individual EA's is relatively new and adds significant amounts of time to an EA schedule without a clear compensating benefit. Terms of reference can be developed and provided to commenting agencies. It can be explained to the public at the first formal public meeting when the project is underway, with modifications made as appropriate. However, it is difficult to see any situation where changes to the terms of reference would be any more than a "tweaking" of what staff was recommending. In addition, the lack of a clear compensating benefit is especially true given recent litigation	Rec. 12 That the Terms of Reference component in the EA process be reviewed and modified so that it includes a scoping component which follows accepted practice guidelines as referred to in Recommendations 4.1, 10.1 and 10.2. If these improvements cannot be achieved, the TOR component should be eliminated.

	over scoping.	
Relative Costs of Process and Projects	Consideration should be given to establishing a benchmark or threshold project cost (eg. $250K) to provide for the exclusion of a project with appropriate provisions.	Rec. 13 Consideration should be given to establishing a benchmark or threshold project cost (eg. $250K) to provide for the exclusion of smaller projects from the EA process subject to appropriate provisions.
Transit Stations on Commercially Zoned Properties	When a private developer wants to develop a commercial property, the land use planning process must be followed. Provided that the proposed development conforms to the zoning for the site, all that is required is site plan approval. Transit operators develop transit facilities such as stations, which are functionally similar to commercial developments. These transit facilities are subject to the EA process instead of the land use planning process, even though the project may already be in conformance with the existing zoning.	Rec. 14 That when a transit project meets the land use planning requirements that would apply to an equivalent private sector development, the project would be deemed to have met EA requirements. This would simplify the process for transit projects, particularly where a transit facility is identified in the Official Plan. This would also remove a barrier to potential private public partnerships (PPP), as these potential projects are subject to both land use and EA processes.
Flexibility of EA Programs and Contracts	Unanticipated issues invariably arise in a properly conducted EA, which in turn trigger a change in the scope of the project. In turn, such changes cause project design and contractual issues that are sometimes resisted	Rec. 15 MOE should provide practice guidance to stakeholders on the best means of responding to the process and contract related problems that are encountered during the EA process.

	by proponents. The EA process must be responsive to stakeholders' needs.	
Consistency of Environmental Review	The environmental components of EAs sometimes do not receive the same level of resourcing and rigor that the project design or mitigation measures do. There is a need for Ontario wide consistency in terms of environmental analysis in EA programs	Rec. 16 Refine and finalize practice guidelines for individual EAs which will ensure a balanced and consistent review of the transportation and environmental dimensions of identified problems, thus improving predictability for all stakeholders (consultants, clients, public MOE, agencies).
Harmonization of Canadian Environmental Assessment Act and Ontario EA Requirements	Almost everyone involved in the EA system is unclear about the relationship between federal impact assessment and provincial EAs. Each system has its own submission requirements, time frames and rules concerning need and alternatives. Within the federal EA system, there is a major difference between how comprehensive screening level EAs are carried out which further adds to the confusion. Under these circumstances, should federal and provincial EAs be carried out in tandem or sequentially?	Rec. 17 MOE should take the lead in creating and communicating a clear transportation sector specific EA process harmonization agreement with the federal government, the aim of which is to integrate and streamline federal and provincial EA reviews

5. Conclusion

The Transportation Table very much appreciates this opportunity to review the current state and practice of environmental assessment in Ontario and to make recommendations to Minister

Dombrowsky on the ways and means of improving our EA review system. We wish the Executive Group and the Minister every success in their deliberations.

6. Appendices (II through IV included in Volume II)

Appendix I – The Transportation Panel Members

Leo Deloyde
Mr. Deloyde has 26 years of experience in the municipal sector dealing with all aspects of development. His education involves an undergraduate degree in urban planning, a Master's in Environmental Studies and has completed an executive program at Harvard's Kennedy School of Government. Leo holds a General Manager position at the City of Burlington.

John S. Sutherns, P.Eng.
Mr. Sutherns is the Chief Executive Officer of McCormick Rankin Corporation. In 1967, John immigrated to Canada where he joined the then Ontario Department of Highways. In 1974, he left the Provincial Government to work in the Private Sector where he joined the Transportation Consulting Firm of McCormick Rankin. John's professional practice with McCormick Rankin has centered on transportation planning, ranging from strategic planning to environmental assessments and from roads to transit to rail service.

David A. Leckie, P.Eng.
David is currently the Director of Roads & Transportation for the City of London and comes to the panel as a nominee of the Ontario Good Roads Association. He comes with five years of municipal engineering and operational experience with the City of London, in roads, traffic, parking, water, wastewater, solid waste and development services. He also holds nearly 30 years of experience with the Ministry of Transportation, Ontario in numerous positions spanning highway planning & design, construction administration, maintenance and operations, program planning and transportation and regulation policy development.

Paul Knowles, P.Eng.
Mr. Knowles is the CAO and Engineer for the Town of Carleton Place since 1989
He participated in the production of the 1993 and the 2000 Municipal Class EAs, and is Chair of the Municipal Engineers' Association's Municipal Class EA Monitoring Committee since it was formed in 2001.

John Kelly, P.Eng.
John Kelly is the Manager of Infrastructure Planning in the Transportation Services Division of the City of Toronto. John holds a BSc. degree in civil engineering from Queen's University and is a licensed professional engineer in the Province of Ontario. He has been employed with the former Metro Toronto and current City of Toronto for the past 14 years, holding various positions in traffic operations and road planning and design. In his current capacity, he is responsible for obtaining environmental assessment approvals for all new and expanded roads and bridges in the City of Toronto.

Michael Wolczyk, P. Eng.
Mr. Wolczyk is the Manager of Marketing and Planning for GO Transit, and is responsible for service and infrastructure planning, and environmental assessment. He has 23 years experience in the transportation sector and holds civil engineering and MBA degrees.

Graham A. Vincent, P. Eng.

Mr. Vincent is the Director of Transportation Planning with the Region of Waterloo. The Transportation Planning division is responsible for development of transportation policy, implementation of the Transportation Master Plan, and planning for all modes of transportation including transit, cycling, pedestrian and roads. The Region is currently embarking on an environmental assessment for a higher order transit service along a corridor central to the urban area.

Appendix II - Workshop Notes

Appendix III - Workshop participant list

Appendix IV - Submissions to the Transportation Panel Members from Workshop Participants
  Linda Gasser, 401 Action Group
  Marty Collier, Ontario Smart Growth Network
  Don Watershed Regeneration Council

APPENDIX 4: WASTE TABLE REPORT

(Formatting of below Sector Table Report may be different than originally submitted)

IMPROVEMENTS TO THE ENVIRONMETAL ASSESSMENT PROCESS FOR WASTE MANAGEMENT PROJECTS

REPORT OF THE WASTE MANAGEMENT PANEL

November 22, 2004

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   II. Table of EA and EPA Criteria
   III. List of Workshop Participants

1. Executive Summary

The province's capacity to handle the waste generated in Ontario is steadily decreasing as older landfill sites are being filled up and the development of new capacity has been hindered by the way in which the environmental assessment process is applied. The creation of new facilities takes many years to plan, develop and get the necessary approvals. Yet, the approvals process has become more uncertain and unpredictable, and municipalities and private sector proponents alike have found it increasingly difficult to navigate their way through the current system.

In order to improve the assessment and decision-making process, the Minister of Environment invited the Waste Management Panel to examine the environmental assessment process as it applies to the management of waste in the province and to develop approaches for improving the process. The Panel has devoted considerable time and energy to the issues and the possible solutions, and has decided on a set of recommendations that will make the environmental assessment and approvals processes more efficient, timely, clear, disciplined, and fair, and will encourage proponents to invest in the development of new facilities in the province.

In the view of the Waste Management Panel, the success of this effort to revitalize the environmental assessment and approvals process rests on a three-legged stool. The first leg is a provincial waste management policy; the second leg, a good database, and the third leg, a strengthened Ministry of the Environment with the capacity to carry out an effective environmental assessment process. If any one of these legs is weak or absent, the effort will fail. With that in mind, the Waste Management Panel offers the following recommendations:

1 - That the Ministry of Environment adopt the following principles in all facets of the environmental assessment improvement initiative, including government policy on waste management:

- Clear, Predictable and Timely;
- Transparent;
- Participatory;
- Based on Good Data, Good Science and Sound Engineering;
- Socially responsible; and,
- Based on Sound Economics.

2 - That the Ministry of Environment clearly articulate in a policy the provincial need for, and the interrelationship among, all elements of waste management in Ontario. This would include a statement of goals, measurable targets and timelines, as well as an evaluation of collection, transfer, re-use and recycling, other forms of waste diversion and all forms of disposal. This policy should be based on a dependable database, updated regularly, that includes:

- estimates of waste currently being generated,

- where the waste comes from and where it goes,
- estimates of capacity to handle those wastes, and
- estimates of changes in waste quantities and projections of future needs.

3 -That the Environmental Protection Act (Sections 30 and 32) and the Environmental Assessment Act be applied to projects in such a way that projects ranging from those likely to have the least impact (such as transfer stations) to those projects with the greatest potential effects (such as landfills and thermal treatment) are subject to the appropriate level of assessment and review, using these two Acts (Appendix II).

4 –That the Ministry of Environment develop a framework regulation for Terms of Reference for waste management undertakings. Based on a clearly stated provincial policy for waste management, the Terms of Reference regulation should set out the rationale, reasonable functional 'alternatives to' and 'alternative methods' along with other provisions that should be addressed by public and private sector undertakings.

The regulation should allow proponents to conduct pre-planning processes at the municipal level to enable them to preliminarily define the project, gauge public support and secure and set aside conditionally zoned land before developing their Terms of Reference document. The results of those discussions should be incorporated into the Terms of Reference as background information and should contribute to the development of the Terms of Reference document without predetermining its content.

5 - That the 'one window' approach used by the Ministry for the public and the proponent be improved. When an undertaking subject to an environmental assessment is proposed, one staff person in the Ministry should be designated to follow the file and to respond to proponent and public inquiries. This person should attend public meetings to explain the environmental assessment process and address questions related to it.

That, as the first step in the environmental approvals process, the Ministry of Environment has a 30-day review period in which to judge whether the environmental assessment documents are complete. If all the required elements are met, then the Ministry must meet the timelines set out in the deadlines regulation.

That the current deadlines regulation be amended so that the government has the right to extend the government or public review period only in exceptional circumstances, and in consultation with the proponent. Extensions to these review periods should be made public well in advance of the deadline. The regulation needs to clearly state that public comments will not be accepted after specific deadlines, and, if the government does not finish its review within the established time frames, the project is deemed approved.

6 – That the Ministry of Environment develop clear specific guidelines for the type, form and level of public participation, emphasizing a range of approaches. These guidelines should be developed in consultation with the audience for whom they are intended. The Terms of Reference for every undertaking should include an outline of how the proponent will assist the public in participating in the process. The level of participant involvement and funding would be commensurate with the size and nature of the project

7- That the province allocate sufficient resources to the Environmental Assessment and Approvals Branch (EAAB), to ensure that the Environmental Assessment Act and Environmental Protection Act approvals processes are supported by the technical expertise expected by proponents and the public. The application (filing) fees required by the Ministry of Environment should be commensurate with the complexity of the review. These fees should be applied directly to the EAAB to finance the approvals process, and a review of the fee structure should be undertaken to help finance the program.

8 - That the Ministry of Environment conduct a review of similar jurisdictions, including the Canadian Federal Government, to identify the processes used for environmental assessment and to incorporate them into Ontario's processes where appropriate.

9 - That the Minister of Environment continues a consultative process of developing improvements to environmental assessment programs with respect to waste management undertakings.

The Waste Management Panel has identified these issues as having the highest priority and deserving of immediate action. If the province fails to implement these recommendations and fails to improve the environmental assessment process, the current lack of waste management capacity in the province will become more critical. We urge the Minister to act on our recommendations as quickly and expeditiously as possible.

2. Definition of Problem

Although the province has set a goal of diverting 60 per cent of the waste stream from landfills by 2008, there will still be a continuing need for waste disposal. The capacity of the facilities presently available in the province is steadily declining, and the options available to municipal and private companies looking to dispose of their waste are limited. At the same time, the development of new facilities has been hindered by the environmental assessment and approvals process as it is currently practiced in Ontario.

Both public and private proponents seeking to build new landfill capacity or create other waste management facilities face the challenge of an environmental assessment and approvals process in which it is difficult to predict the outcome, difficult to set a clear course and difficult to navigate the process in a predictable and timely way. Moreover, proponents face a process that they believe has resulted in unacceptably long time frames and excessive costs. Similarly, the public are concerned about the lack of clarity around which issues are included in the terms of reference for a proposed undertaking, and the uncertainties about the process, such as whether a hearing will be held or not.

The lack of a clear provincial policy on waste management and the problems arising from the way in which the environmental assessment process is applied have resulted in a reluctance on the part of proponents to propose new projects that are subject to environmental assessment and a failure to develop new disposal capacity in the province. It has meant increased reliance on the export of waste to other jurisdictions - a situation in which municipalities must negotiate with and depend on other jurisdictions where the rules governing the acceptance of waste may be subject to change.

3. Mandate of Waste Panel

To address the problems inherent in the environmental assessment process, Environment Minister Leona Dombrowsky appointed an executive advisory panel and three sector panels on waste management, cleaner energy and transportation and transit. The mandate of the panel is to provide "expert advice and guidance on improvements to Ontario's Environmental Assessment process" to support the "government's waste diversion and waste management, clean energy and transportation objectives".

The stated purpose of the panel is to meet the government's goals to revitalize the EA program, providing clear, prescriptive rules for appropriate environmental planning and decision-making; rebalance EA decision-making by setting out clear roles for all participants; and, refocus the EA process such that the level of assessment and review of proposed undertakings reflects the potential that proposals have to positively or negatively impact the environment, as defined by the *Environmental Assessment Act*.

It was recognized that waste management undertakings may take several years to obtain necessary ministry approvals, and that consideration should be given to enhancing the quality and timeliness of such decision-making. Each sector panel was asked to report their findings and recommendations to the Executive Panel by November 19. (The members of the waste management panel are listed in Appendix I.)

4. Review Method

After their initial meeting with the Executive Panel on September 28, the Waste Management Panel held 5 meetings. In the course of these meetings, the Panel discussed the issues related to waste management and suggested solutions in preparation for an invitational workshop. The workshop was held on Friday, November 5 in the Gallery Room of the Ontario Heritage Centre from 9:00 a.m. to 2.30 p.m. The workshop was attended by 44 people from a broad range of backgrounds including representatives of municipalities, the waste management industry and the interested public. A discussion paper outlining the topics, issues and the Panel's proposed solutions was delivered to all workshop participants in advance of the workshop, and sent out to everyone who expressed interest in the work of the Waste Management Panel and the environmental assessment reform process.

The workshop was divided into 5 groups to discuss the report and its proposed solutions, with Waste Management Panel members acting as facilitators in each group. The findings from the 5 tables were reported back to the workshop.

The Waste Management Panel held three more meetings, subsequent to the workshop, to incorporate the feedback and ideas from the workshop into their report and to finalize their recommendations to the Executive Panel and to the Minister.

Although the Waste Management Panel interpreted their mandate to include hazardous as well as municipal, industrial and commercial waste, the Panel did not have sufficient time to give hazardous waste the attention and thorough consideration that it deserves. Nevertheless, the Panel believes that some of the improvements to the EA process that are being proposed would also apply to hazardous waste initiatives.

5. Recommendations

The Waste Management Panel offers the Executive Panel and the Minister of Environment the following recommendations for improving the environmental assessment and approvals process in Ontario.

Issue #1 – Principles

Discussion:

The Waste Management Panel developed a set of principles to guide their discussions and to inform their recommendations. These principles underlie all the recommendations being made to the Minister and the Executive Panel. The Waste Management Panel recommends that these principles be adopted by the Ministry of Environment and the province to guide sound waste management policy and the assessment of all related undertakings in the province.

Recommendation #1:

That the Ministry of Environment adopt the following 6 principles as the basis of a sound waste management policy for the province and an improved environmental assessment process, including:

1. **Clear, Predictable and Timely** – The process should be clear, predictable and timely. Clarity of application of existing legislation and approvals processes is essential to effective environmental assessment. This applies to the Environmental Assessment Act, the Environmental Protection Act and certificates of approval for the waste management sector.

2. **Transparent** – The environmental assessment process should be transparent and enable proponents, reviewers and the public to understand the process and to follow projects through the stages of government review and approvals.

3. **Participatory** – The environmental assessment process should include opportunities and resources for participation by all potentially affected parties.

4. **Based on Good Data, Good Science and Sound Engineering** – All elements of the process should be based on the best information available, and sound scientific and engineering practices.

5. **Be Socially responsible –** Consistent with the intent of the legislation, the environmental assessment process as it relates to waste management should be responsive to the needs of the community, listen to their concerns and act accordingly, and

6. **Based on Sound Economics** – A waste management strategy and all related undertakings should be based on sound economics, among

other factors.

Issue #2 – The lack of a provincial policy for waste management

Discussion:

There is currently no overarching provincial policy for waste management. The approval process needs to be governed by a provincial waste management policy that includes all elements of a waste management system and recognizes the inter-relationship of those elements. This would help streamline the process by identifying the province's need for different types of waste management activities, and by determining the appropriate size and capacity of the facilities that must be created to manage waste.

Issues such as rationale, alternatives, and the public interest need to be clearly articulated in a provincial policy so that sound public policy forms the basis for evaluating waste management proposals under the environmental assessment process. The policy should also reflect the differences in available resources and infrastructure needs between northern and southern Ontario, and between urban and rural areas. This would help to achieve the intent of the Environmental Assessment Act, which is to protect the environment through good planning and decision-making in the province.

The province should start by identifying immediate short-term policy goals. These short-term goals would help guide decisions on what waste management strategies and facilities may or may not be acceptable in the immediate future while designing the long-term strategy. The Panel suggests that these short-term goals include:

- Self-sufficiency in waste management for the province within 5 years; and,
- A target for the amount of diversion that will be achieved within the same time frame.

The creation of short-term goals should not compromise the immediate development of a long-term strategy.

In the long term, the province should develop a more comprehensive waste management policy to articulate the goals for diversion initiatives and an estimate of disposal capacity. This policy would help provide a rationale for undertakings subject to environmental assessment. In developing the longer-term policy, the province should:

- immediately commit adequate resources to develop a provincial policy statement;
- gather data on estimates of waste being generated, their sources and disposition, estimates of the capacity to handle these wastes, and estimates of changes and projections of future needs;

- set goals, measurable targets and timelines for waste diversion and the creation of waste management facilities;
- provide full opportunities for the public to be involved in the development of this strategy;
- consider geographic and demographic diversity in the province;
- create an advisory panel with support from technical, economic, social, scientific and operational experts to assist in the long-term policy development..

Recommendation #2:

That the Ministry of Environment clearly articulate in a policy the provincial need for, and the interrelationship among, all elements of waste management in Ontario, in accordance with the principles in recommendation #1. This would include a statement of goals, measurable targets and timelines, as well as an evaluation of collection, transfer, re-use and recycling, other forms of waste diversion and all forms of disposal. This policy should be based on a dependable database, updated regularly, that includes:

- estimates of waste currently being generated,
- where the waste comes from and where it goes,
- estimates of capacity to handle those wastes, and
- estimates of changes in waste quantities and projections of future needs.

Issue #3 – Clarification of the Applicability of the Environmental Assessment Act and the Environmental Protection Act to Waste Management Undertakings

Discussion:

Historically, criteria have been developed in a piecemeal fashion to decide which waste management undertakings are subject to the requirements of the Environmental Assessment Act and require examination of alternatives and effects on the environment, and which ones require primarily technical scrutiny under the Environmental Protection Act. For example, at present some administrative changes to landfill sites that do not have major environmental impacts must still undergo a full environmental assessment.

A clearer, more rational process is needed – a process that allows projects likely to have no significant environmental or community impacts to be exempted from the environmental assessment process and ensures that projects likely to have the most significant impacts are thoroughly evaluated. The scale and extent of project assessment, review and approval should reflect the nature and extent of the potential negative and positive impacts of a project.

Recommendation #3:

That the Environmental Protection Act (Sections 30 and 32) and the Environmental Assessment Act be applied to projects in such a way that projects ranging from those with the least likely impact (such as transfer stations) to those projects with the greatest possibie impact (such as landfills and thermal treatment) are subject to the appropriate level of assessment and review, using these two Acts.

The Waste Management Panel has developed a chart with suggested categories that are shown in Appendix II of this report.

Issue #4 – The Need for a Terms of Reference Regulation that Applies to Public and Private Undertakings

Discussion:

Currently, there are significant differences in the methods by which the provisions of the Environmental Assessment Act are applied to public and private sector undertakings.

The environmental assessment process should take into account the reasonableness of considering certain alternatives for both public and private sector proponents, and these should be made clear through the development of a framework regulation for the terms of reference for waste management undertakings.

Based on a clearly stated provincial policy for waste management, this regulation should set out the rationale, the reasonable functional "alternatives to" and "alternative methods", and should recognize that conceptual planning and decision-making prior to commencing the environmental assessment may contribute to the development of the content of the terms of reference

The EA process should endorse a preliminary planning step prior to the formal EA process that includes:

- discussions on the nature, extent and purpose of the proposed undertaking,
- discussions of related planning and land use issues, and
- the assessment of the extent of local support.

The results of those discussions should be incorporated into the terms of reference (TOR) as background information and should contribute to the development of the Terms of Reference document without predetermining its content.

The Waste Management Panel is recommending with the development of this framework regulation for Terms of Reference documents that environmental assessments, whether they are public or private, should be subject to similar levels of scrutiny.

Recommendation # 4:

That the Ministry of Environment develop a framework regulation for Terms of Reference for waste management undertakings.

Based on a clearly stated provincial policy for waste management, this regulation should set out the rationale, reasonable functional 'alternatives to' and 'alternative methods' along with other provisions that would be required to be addressed by public and private sector undertakings.

The regulation should allow proponents to conduct pre-planning processes at the municipal level to enable them to preliminarily define the project, gauge public support and secure and set aside conditionally zoned land before developing their Terms of Reference document. The results of those discussions should be incorporated into the Terms of Reference as background information and should contribute to the development of the Terms of Reference document without predetermining its content.

Issue #5 – Lack of transparency in the Ministry of Environment's process

Discussion:

Proponents and the public alike have difficulty in acquiring information on the environmental assessment process and the status of projects undergoing environmental assessment.

There is also considerable concern about the extended time frames for completing the process. Many environmental assessment projects have been delayed when government review periods have gone significantly beyond the timelines set out in the deadlines regulation. This may, in some instances, be due to applications that do not meet the requirements of the environmental assessment process.

The Waste Management Panel recommends that the first step in the environmental assessment process be a 30-day review for administrative completeness. This would allow the Ministry of Environment to judge whether all the required elements of an environmental assessment document are met. If a proponent has met all the requirements, then the timelines in the deadlines regulation should be strictly adhered to. If the Ministry of Environment cannot meet a specific deadline, which should only occur in exceptional circumstances, then the Ministry should notify the proponent and public well in advance of the deadline. Deadline extensions should be undertaken in consultation with the proponent. If the government does not meet the deadlines, then the project is deemed approved.

Recommendation #5:

That the 'one window' approach used by the Ministry for the public and the proponent be improved. When an undertaking subject to an environmental assessment is proposed, one staff person in the Ministry should be designated to follow the file and to respond to proponent and public inquiries. This person should attend public meetings to explain the environmental assessment process and address questions related to it.

That, as the first step in the environmental approvals process, the Ministry of Environment have a 30-day review period in which to judge whether the environmental assessment documents are complete. If all the required elements are met, then the Ministry must meet the timelines set out in the deadlines regulation.

That the current deadlines regulation be amended so that the government has the right to extend the government or public review period only in exceptional circumstances, and in consultation with the proponent. Extensions to these review periods should be made public well in advance of the deadline. The regulation needs to clearly state that public comments will not be accepted after specific deadlines, and, if the government does not finish its review within the established time frames, the project is deemed approved.

Issue #6– Barriers to Public Participation

Discussion:

Public participation is an important element of the environmental planning and decision-making process. Yet, the Ministry of Environment guidelines do not give direction with respect to the form and level of public participation that is appropriate, when and if there should be participant funding and how it should be applied. This leaves the development of consultation plans and the determination of the need for participant funding to the discretion of proponents. There is a need for the Ministry of Environment to articulate clear rules for the participation of affected parties, and to define when it would be appropriate for proponents to provide financial assistance to participants.

Recommendation #6:

That the Ministry of Environment develop clear guidelines for the type, form and level of public participation, emphasizing a range of approaches. These guidelines should be developed in consultation with the audience

for whom they are intended.

That the Terms of Reference for every undertaking include an outline of how the proponent will assist the public in participating in the process. The level of participant involvement and funding would be commensurate with the size and nature of the project.

Issue #7– Allocation of Ministry of Environment Resources

Discussion:

It is recognized by both proponents of waste management undertakings and the public that the Ministry of Environment lacks sufficient resources to fully support the application of the Environmental Assessment Act and technical reviews of proposals submitted under the Environmental Protection Act. If adequate resources are not allocated to the environmental assessment and approvals process, these recommendations cannot be implemented and improvements cannot be achieved.

Because of staff turnover and a diminishing level of support during the last decade, environmental assessment undertakings are likely to have a number of different staff assigned to the project. This has slowed down the approvals process, and even simple applications may take many months to resolve. Moreover, as the majority of EA and EPA approvals are given without hearings, it is difficult for the public to be confident that operational and technical concerns have been adequately addressed.

Recommendation #7:

That the Province allocate sufficient resources to the Environmental Assessment and Approvals Branch (EAAB), to ensure that the Environmental Assessment Act and Environmental Protection Act approvals processes are supported by the technical expertise expected by proponents and the public.

The application (filing) fees required by the Ministry of Environment should be commensurate with the complexity of the review. These fees should be applied directly to the EAAB to finance the approvals process, and a review of the fee structure should be undertaken to ensure that the fees help finance the program.

Issue #8 – What Happens in Other Jurisdictions

Discussion:

Members of the Waste Management Panel and many attendees at the workshop commented on the need for a review of methods used in other jurisdictions where the environmental assessment process appears to run smoothly. Time prevented the Panel from undertaking such a review.

Recommendation #8:

That the Ministry of Environment conduct a review of similar jurisdictions, including the Canadian Federal Government, to identify the processes used for environmental assessment and to incorporate them into Ontario's processes where appropriate.

Issue #9 - Next Steps

Discussion:

The Panel recognizes that the time frame for considering improvements to the environmental assessment process did not allow for the expansion of the detail that was intended to accompany their recommendations. Therefore, the Waste Management Panel recommends that a collaborative consultation be undertaken to further develop the details of these recommended improvements.

Recommendation #9:

That the Minister of Environment continue a consultative process of developing improvements to environmental assessment programs with respect to waste management undertakings.

5. Conclusion

The Waste Management Panel has developed these recommendations as a road map to improving waste management approvals in the province. Addressing these key issues will help to meet the Minister's stated objectives to revitalize, rebalance, and reform the approvals process. Also, given the short time for this review, further discussion with interested and directly affected parties is essential to fully develop and successfully implement the suggested improvements.

The Waste Management Panel wants to emphasize that an effective provincial waste management strategy subject to an environmental assessment and approvals process will only be successful if all three legs of the stool -- a provincial waste management policy; a good database and a strengthened Ministry of the Environment – are put in place.

ACKNOWLEDGEMENT

The Waste Management Panel members would like to sincerely thank Anne Wordsworth for her untiring efforts and stellar work in recording, deciphering and organizing the many comments and statements made by the members to produce this report. A job very well done!

Appendix I – Members of the Waste Management Panel

Howard M. Goldby
Mr. Goldby is the Vice-President, Environmental Health and Safety with BFI Canada Inc. A registered Professional Engineer, Mr. Goldby graduated as a Civil Engineer in 1972 from the University of Salford, England. He has held positions in the construction industry, consulting and the oil industry, and since 1987 with three major waste management companies: Waste Management Inc., BFI Waste Systems Ltd. and BFI Canada Inc.

Nigel Guilford
Mr. Guilford is President and Director of the Ontario Waste Management Association. The Ontario Waste Management Association, founded in 1977, speaks for nearly 300 independent companies in the private sector who provide the products and services in the waste management sector.

Janine Ralph
Ms. Ralph is currently the Manager of Waste Policy & Planning at the Regional Municipality of Niagara's Waste Management Services Division. She has been involved in the waste management field at the municipal level for over 12 years. During this time she has been responsible for the development and implementation of a wide range of waste managementprog rams, approvals processes and environmental policies and practices. She has a Bachelor of Science in Biochemistry from Queen's University in Kingston.

Usman Valiante
Mr. Valiante is an environmental consultant who has undertaken work for a number of waste management companies in Ontario. He has extensive background in the field of waste diversion and recycling, including involvement with Waste Diversion Ontario. Mr. Valiante has previously been involved with both the Brewers of Ontario and the Brewers Association of Canada.

John Jackson
Mr. Jackson has worked with citizens groups on waste issues for the past 25 years. In this capacity he has been involved in environmental assessments on provincial, municipal, and private sector hazardous waste and municipal waste proposals.

Paul H. Rennick
Mr. Rennick is Principal of Rennick and Associates, providing services in natural resource and environmental management. Paul has many years of experience in consulting, administration and training in environmental assessment. Paul was formerly the Director of the Ministry of the Environment's Environmental Assessment Branch.

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IMPROVING ENVIRONMENTAL ASSESSMENT IN ONTARIO: A FRAMEWORK FOR REFORM

VOLUME II

A Report Prepared by the Minister's Environmental Assessment Advisory Panel – Executive Group

March 2005

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DRAFT SECTOR PROCEDURE CHARTS

Environmental Assessment Procedural Framework: Energy Template

Approach to Energy Sector Chart:

The chart set out below is intended to annotate the general chart by providing commentary on the differences between the general chart and the existing requirements for the sector, highlighted in bold and italics. Existing requirements within this sector arise from O.Reg.116/01 and a Guide referenced in this Regulation, within the definition of "Environmental Screening Process".

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
1 (exempt) ***Explicit in O.Reg. 116/01***	Advances/ consistent with provincial policy ***Implicit in O.Reg. 116/01, which exempts smaller and/or cleaner energy projects***	None/ very limited ***Implicit in O.Reg. 116/01***	None/ very limited ***Implicit in O.Reg. 116/01***	1 phase: project description ***Minor variation from O.Reg. 116/01 to increase transparency***	Category 1 Assessment (prescribed form and length: 5 pg plus appendices) ***Minor variation from O.Reg. 116/01 to increase transparency***	• Local notice of project completion; • www-accessible documentation; • no financial resources ***Minor variation from O.Reg. 116/01 to increase transparency***	•Conformity to standard ***Implicit in O.Reg. 116/01***	None ***Implicit in O.Reg. 116/01***	*0-1 month* ***Minor variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
2 (local council approval) ***Variation to provide local accountability without provincial decision-making and consistency across sectors***	Advances provincial policy ***Implicit in O.Reg. 116/01, which exempts smaller and/or cleaner energy projects***	None/ very limited ***Implicit in O.Reg. 116/01***	•None/ very limited *and* •potential for cumulative impacts with other similar projects ***Key change from Category 1 to allow local Council to determine whether number of similar projects is an issue***	2 Phase: •project description; •cumulative effects ***Key change from Category 1 to allow local Council to determine whether number of similar projects is an issue***	Category 2 Assessment (prescribed form and length: 10pg plus appendices) ***Minor variation from O.Reg. 116/01 to increase transparency and provide consistency across sectors***	• Local notice of project completion *and* Council decision; • www-accessible documentation; • no financial resources Minor variation from O.Reg. 116/01 to provide local accountability without provincial decision-making, and consistency across sectors	•Conformity to standard *and* •purpose of EA Act *and* •local Council approval Variation to provide local accountability, but no provincial decision-making	None ***Implicit in O.Reg. 116/01***	*2-3 months* ***Variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
3 (screening) ***Consistent with O.Reg. 116/01***	Advances provincial policy ***Variation from O.Reg. 116/01, which does not reference policy; consistent with intent of O.Reg. 116/01 which provides lesser EA Act requirements for cleaner/ greener energy projects; consistent across sectors***	•May/ may not have potential for on-site impacts, but not upon provincially/ regionally protected resources/ features ***Variation from O.Reg. 116/0, which does not consider on-site risks; consistent with requirements for similar projects across sectors***	•Potential for cumulative effects with other projects; *and/or* •potential for multi-generational nuisance impacts, but not including health or provincially/ regionally protected resource ***Variation from O.Reg. 116/01 which does not consider off-site risks; consistent with requirements for similar projects across sectors***	3 Phases: - •project description; •alternatives; •cumulative effects Variation from Guide referenced in O.Reg. 116/01 to consider alternatives and cumulative effects; consistent with requirements for similar projects across sectors	•Category 3 Assessment (prescribed form and length: 25 pg plus appendices); •Category 3 Government Review (prescribed form, scope & 30-day time limit at end) ***Variation from Guide referenced in O.Reg. 116/01, but likely shorter***	• Local and EBR notice of project proposal and project completion; • EBR notice of completion of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of Assessment process; • if public concern, 1-day mandatory mediation, prior to appeal period ***Variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***	•Conformity to standard *and* •purpose of EA Act *and* •most reasonable alternative to minimize on-site & off-site impacts ***Variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***	• ERT request for hearing following mediation; ; •if granted, maximum 3-day hearing unless further leave ***Variation from Guide referenced in O.Reg. 116/01 to provide greater accountability, transparency and timely results and consistency across sectors***	6-9 months ***Variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
4 (review) ***Consistent with O.Reg. 116/01***	Advances/ consistent with provincial policy ***Variation from O.Reg.116/01, which does not reference policy; consistent with intent of O.Reg. 116/01 which provides lesser EA Act requirements for cleaner/ greener energy projects; consistent with trigger requirements for similar projects across sectors***	May/ may not have potential impact upon provincially/ regionally significant resource ***Variation from O.Reg. 116/01, which does not consider on-site risks; consistent with trigger requirements or similar projects across sectors***	•Potential for cumulative effects with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* impacts upon provincially/ regionally protected resource ***Variation from O.Reg. 116/01, which does not consider off-site risks; consistent with trigger requirements for similar projects across sectors***	4 Phases: •project description; •alternative designs; •alternative locations; •cumulative impacts ***Departure from Guide referenced in O.Reg. 116/01 to consider alternatives and cumulative effects; consistent with requirements for similar projects across sectors***	•Category 4 Assessment (prescribed form and length: 50 pg plus appendices); •Category 4 Government Review (prescribed form, scope and timing, concluding with 45-day time limit at end) ***Variation from Guide referenced in O.Reg. 116/01, but likely shorter***	• Local and EBR notice of project proposal & each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each of phases 3 &4 in assessment process; • if public concern, 1-day mandatory mediation for each of phases 3 & 4 following peer and government review and prior to any appeal period ***Variation from Guide referenced in O.Reg.116/01, in order to provide consistency across sectors***	Conformity to standard *and* Purpose of EA Act *and* most reasonable design *and* reasonable location ***Variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***	•ERT request for hearing following mediation; •maximum 10-day hearing all phases unless special permission; intevenor funding (prescribed eligibility and approach) ***Variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***	1-1.5 years ***Variation from Guide referenced in O.Reg. 116/01, in order to provide consistency across sectors***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
5 (individual EA) ***Explicit in EA Act***	Not consistent with provincial policy ***Variation from existing practice in triggering individual EAs, in order to provide consistency across sectors***	May/ may not have potential impact upon provincially/ regionally significant resource ***Variation from existing practice in triggering individual EAs; consistent with trigger requirements for similar projects across sectors***	•Potential cumulative impacts with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* •impacts upon provincially/ regionally significant resource ***Variation from existing practice in triggering individual EAs; consistent with trigger requirements for similar projects across sectors***	5 phases following TOR: (e.g., project description; need; alternative designs; alternative locations; cumulative impacts) ***Explicit in s.6.1 EA Act, except for cumulative impacts***	•Category 5 Assessment: prescribed form and length (100 pg plus appendices); •Category 5 Government Review (prescribed form, scope and timing for each phase, concluding with 60-day time limit at end) ***Variation from existing TOR practice for individual EAs, in order to provide consistency across sectors***	• Local and EBR notice of project proposal and each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each phase of assessment process; • if public concern, 1-day mandatory mediation for each phase following peer and government review and prior to appeal period ***Variation from existing TOR practice for individual EAs, in order to provide consistency across sectors***	•Conformity to TOR *and* •purpose of EA Act (e.g., need for project; most reasonable design; reasonable location; and project advantages outweigh disadvantages) ***Explicit in EA Act and EA practice***	•ERT hearing following mediation (for each phase where TOR permits), unless frivolous; •maximum 10-day hearing per phase unless special permission; •intervenor funding (prescribed eligibility and approach) ***Variation from existing practice in order to provide consistency across sectors***	2-3 years ***Variation from existing TOR practice***

Environmental Assessment Procedural Framework: Transportation Template

Approach to Transportation Sector Chart:

The chart set out below is intended to annotate the general chart by providing commentary on the differences between the general chart and the existing requirements for the sector, highlighted in bold and italics. Existing requirements within this sector arise from three class environmental assessments: for Ministry of Transportation (MTO) projects, GO Transit projects, and Municipal projects.

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
1 (exempt) Explicit in MTO Class EA (Class 4), GO Class EA (Sched A), MEA Class EA (Sched A)	Advances/ consistent with provincial policy ***Variation from Class EAs, in order to provide consistency across sectors***	None/ very limited ***Implicit in Class EAs***	None/ very limited ***Implicit in Class EAs***	1 phase: project description ***Minor variation from Class EAs to increase transparency and consistency across sectors***	Category 1 Assessment (prescribed form and length: 5 pg plus appendices) ***Minor variation from Class EAs to increase transparency and consistency across sectors***	• Local notice of project completion; • www-accessible documentation; • no financial resources ***Minor variation from Class EAs to increase transparency and consistency across sectors***	•Conformity to standard ***Implicit in Class EAs***	None ***Implicit in Class EAs***	*0-1 month* ***Implicit in Class EAs***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
2 (local council approval) ***Variation from Class EAs to provide local accountability without provincial decision-making, and consistency across sectors***	Advances provincial policy ***Variation from Class EAs, in order to provide consistency across sectors***	None/ very limited ***Implicit in Class EAs***	•None/ very limited *and* •potential for cumulative impacts with other similar projects ***Key change from Category 1 to allow local Council to determine whether number of similar projects is an issue***	2 Phases: •project description; •cumulative effects ***Key change from Category 1 to allow local Council to determine whether number of similar projects is an issue***	Category 2 Assessment (prescribed form and length: 10pg plus appendices) ***Minor variation from Class EAs to increase transparency and provide consistency across sectors***	• Local notice of project completion *and* Council decision; • www-accessible documentation; • no financial resources Variation from Class EAs to provide local accountability without provincial decision-making, and consistency across sectors	•Conformity to standard *and* •purpose of EA Act *and* •local Council approval Variation from Class EAs to provide local accountability, but no provincial decision-making	None ***Implicit in Class EAs***	*2-3 months* ***Variation from Class EAs***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
3 (screening) ***Existing in Class EAs***	Advances provincial policy ***Variation from Class EAs, which do not reference policy, in order to provide consistency across sectors***	•May/ may not have potential for on-site impacts, but not upon provincially/ regionally protected resources/ features ***Variation from Class EAs,which do not consider on-site risks; consistent with trigger requirements for similar projects across sectors***	•Potential for cumulative effects with other projects, *and/or* •potential for multi-generational nuisance impacts, but not including health or provincially/ regionally protected resource ***Variation from Class EAs, which do not consider off-site risks; consistent with trigger requirements for similar projects across sectors***	3 Phase: - •project description; •alternatives; •cumulative effects Generally consistent with Class EAs, but adds topic of cumulative impacts, to provide consistency across sectors	•Category 3 Assessment (prescribed form and length: 25 pg plus appendices); •Category 3 Government Review (prescribed form, scope & 30-day time limit at end) ***Variation from Class EAs, but likely shorter***	• Local and EBR notice of project proposal and project completion; • EBR notice of completion of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of Assessment process; • if public concern, 1-day mandatory mediation, prior to appeal period ***Variation from Class EAs, in order to provide increased transparency and public involvement, and consistency across sectors***	•Conformity to standard *and* •purpose of EA Act *and* •most reasonable alternative to minimize on-site & off-site impacts ***Variation from Class EAs, in order to provide consistency across sectors***	•ERT hearing, following mediation; •if granted, maximum 3-day hearing unless further permission ***Variation from Class EAs, in order to provide greater accountability, transparency and timely results, and consistency across sectors***	6-9 months ***Variation from Class EAs***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
4 (review) ***existing in Class EAs for MEA, MTO***	Advances/ consistent with provincial policy ***Variation from Class EAs, which do not reference policy, in order to provide consistency across sectors***	May/ may not have potential impact upon provincially/ regionally significant resource ***Variation from Class EAs, which do not consider on-site risks; consistent with trigger requirements for similar projects across sectors***	•Potential for cumulative effects with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* impacts upon provincially/ regionally protected resource ***Variation from Class EAs, which do not consider off-site risks; consistent with trigger requirements for similar projects across sectors***	4 Phases: •project description; •alternative designs; •alternative locations; •cumulative impacts ***Generally consistent with Class EAs, but adds topics of cumulative impacts, to provide consistency across sectors***	•Category 4 Assessment (prescribed form and length: 50 pg plus appendices); •Category 4 Government Review (prescribed form, scope and timing, concluding with 45-day time limit at end) ***Variation from Class EAs, but likely shorter***	• Local and EBR notice of project proposal & each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each of phases 3 &4 in assessment process; • if public concern, 1-day mandatory mediation for each of phases 3 & 4 following peer and government review and prior to any appeal period ***Variation from Class EAs, to provide increased transparency and public involvement, in order to provide consistency across sectors***	Conformity to standard *and* purpose of EA Act *and* most reasonable design *and* reasonable location ***Variation from Class EAs; consistent with the EAA and individual EA requirements and with requirements of similar projects across sectors***	•ERT hearing following mediation; •maximum 10-day hearing all phases unless special permission; •intervenor funding (prescribed eligibility and approach) ***Variation from Class EAs, in order to provide greater accountability, transparency, and timely results, and consistency across sectors***	1-1.5 years ***Variation from Class EAs***

PROJECT CATEGORY	**PROJECT TRIGGERS**			**PROCESS**				**HEARING**	**TIME**
	BENEFITS	**RISKS**		**PHASES**	**DOCUMENTS**	**PUBLIC ROLE & RESOURCES**	**APPROVAL TEST(S)**		
	PROVINCIAL	**ON-SITE**	**OFF-SITE**						
5 (individual EA) ***Explicit in EA Act***	Not consistent with provincial policy ***Variation from existing practice in triggering individual EAs, in order to provide consistency across sectors***	May/ may not have potential impact upon provincially/ regionally significant resource ***Variation from existing practice in triggering individual EAs; consistent with trigger requirements for similar projects across sectors***	•Potential cumulative impacts with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* •impacts upon provincially/ regionally significant resource ***Variation from existing practice in triggering individual EAs; consistent with trigger requirements for similar projects across sectors***	5 phases following TOR: (e.g., project description; need; alternative designs; alternative locations; cumulative impacts) ***Explicit in s.6.1 EA Act, except for cumulative impacts***	•Category 5 Assessment: prescribed form and length (100 pg plus appendices); •Category 5 Government Review (prescribed form, scope and timing for each phase, concluding with 60-day time limit at end) ***Variation from existing TOR practice for individual EAs, in order to provide consistency across sectors***	• Local and EBR notice of project proposal and each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each phase of assessment process; • if public concern, 1-day mandatory mediation for each phase following peer and government review and prior to appeal period ***Variation from existing TOR practice for individual EAs, in order to provide consistency across sectors***	•Conformity to TOR *and* •purpose of EAA (e.g., need for project; most reasonable design; reasonable location; and project advantages outweigh disadvantages) ***Explicit in EA Act and EA practice***	•ERT hearing following mediation (for each phase where TOR permits), unless frivolous; •maximum 10-day hearing per phase unless special permission; •intervenor funding (prescribed eligibility and approach) ***Variation from existing practice in order to provide consistency across sectors***	2-3 years ***Variation from existing TOR practice***

Environmental Assessment Procedural Framework: Waste Template

Approach to Waste Sector Chart:

The chart set out below is intended to annotate the general chart by providing commentary on the differences between the general chart and the existing requirements for the sector, highlighted in bold and italics. Existing requirements within this sector arise from an existing policy developed by the Ministry of the Environment in the late 1980s, which sets out the minimum waste quantities sufficient to designate various categories of waste projects under the EAA.

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
1 (exempt) ***Explicit in existing EA waste policy***	Advances/ consistent with provincial policy ***Consistent with existing EA waste policy, which includes regard to 3Rs***	None/ very limited ***Variation from existing EA waste policy which considers quantities only***	None/ very limited ***Variation from existing EA waste policy which considers quantities only***	1 phase: project description ***Minor variation from existing EA waste policy to increase transparency and consistency across sectors***	Category I Assessment (prescribed form and length: 5 pg plus appendices) ***Minor variation from existing EA waste policy to increase transparency and consistency across sectors***	• Local notice of project completion; • www-accessible documentation; • no financial resources ***Minor variation from existing EA waste policy to increase transparency and consistency across sectors***	•Conformity to standard ***Minor variation from existing EA waste policy to increase transparency and consistency across sectors***	None ***Implicit in existing EA waste policy***	*0-1 month* ***Variation from existing EA practice on exemptions and likely less time***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
2 (local council approval) ***Variation from existing EA waste policy to provide local accountability without provincial decision-making, and consistency across sectors***	Advances provincial policy ***Consistent with existing EA waste policy, which includes regard to 3Rs***	None/ very limited ***Variation from existing EA waste policy which considers quantities only***	•None/ very limited *and* •potential for cumulative impacts with other similar projects ***Key change from Category 1 to allow local Council to determine whether number of similar projects is an issue***	2 Phase: •project description; •cumulative effects ***Key change from Category 1 to allow local Council to determine whether number of similar projects is an issue***	Category 2 Assessment (prescribed form and length: 10pg plus appendices) ***Minor variation from existing EA waste policy to increase transparency and provide consistency across sectors***	• Local notice of project completion *and* Council decision; • www-accessible documentation; • no financial resources ***Variation from existing EA waste policy to provide local accountability without provincial decision-making, and consistency across sectors***	•Conformity to standard *and* •purpose of EA Act *and* •local Council approval ***Variation from EA exemption criteria to provide local accountability, but no provincial decision-making***	None ***Implicit in existing EA waste policy***	*2-3 months* ***Variation from existing EA practice to provide consistency across sectors***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
3 ***Variation from existing EA waste policy to provide more precise linkage between benefits/risks and assessment requirements and provide consistency across sectors***	Advances provincial policy ***Consistent with existing EA waste policy, which includes regard to 3Rs; consistent with trigger requirements for similar projects across sectors***	•May/ may not have potential for on-site impacts, but not upon provincially/ regionally protected resources/ features ***Variation from existing EA policy, which does not consider on-site risks; consistent with trigger requirements for similar projects across sectors***	•Potential for cumulative effects with other projects; *and/or* •potential for multi-generational nuisance impacts, but not including health or provincially/ regionally protected resource ***Variation from existing EA waste policy, which does not consider off-site risks; consistent with trigger requirements for similar projects across sectors***	3 Phase: - •project description; •alternatives; •cumulative effects ***Variation from existing EA waste policy, to provide more precise linkage between benefits/risks and assessment requirements and consistency across sectors***	•Category 3 Assessment (prescribed form and length: 25 pg plus appendices); •Category 3 Government Review (prescribed form, scope & 30-day time limit at end) ***Variation from existing EA waste policy, to provide consistency across sectors***	• Local and EBR notice of project proposal and project completion; • EBR notice of completion of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of Assessment process; • if public concern, 1-day mandatory mediation, prior to appeal period ***Variation from existing EA waste policy, in order to provide increased transparency and public involvement, and consistency across sectors***	•Conformity to standard *and* •purpose of EA Act *and* •most reasonable alternative to minimize on-site & off-site impacts ***Consistent with individual EA requirements; consistent with requirements for similar projects across sectors***	•ERT hearing, following mediation; •if granted, maximum 3-day hearing unless further permission ***Variation from existing EA policy, in order to provide greater accountability, transparency and timely results, and consistency across sectors***	3-6 months ***Variation from existing EA practice to provide consistency across sectors***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
4 ***Variation from existing EA waste policy, to provide more precise linkage between (i) provincial policy and project benefits/risks and (ii) assessment requirements, and provide consistency across sectors***	Advances/ consistent with provincial policy ***Variation from existing EA waste policy, to make provision for lesser requirements for facilities which are consistent with provincial policy; consistent with trigger requirements for similar projects across sectors***	May/ may not have potential impact upon provincially/ regionally significant resource ***Variation from existing EA policy, which does not consider on-site risks; consistent with trigger requirements for similar projects across sectors***	•Potential for cumulative effects with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* impacts upon provincially/ regionally protected resource ***Variation from existing EA waste policy, which does not consider off-site risks; consistent with trigger requirements for similar projects across sectors***	4 Phases: •project description; •alternative designs; •alternative locations; •cumulative impacts ***Variation from EA waste policy, to make provision for less than full EA assessment requirements for certain facilities; consistent with requirements for similar projects across sectors***	•Category 4 Assessment (prescribed form and length: 50 pg plus appendices); •Category 4 Government Review (prescribed form, scope and timing, concluding with 45-day time limit at end) ***Variation from existing EA waste policy, as these requirements are less than full EA requirements, consistent with requirements for similar projects across sectors***	• Local and EBR notice of project proposal & each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each of phases 3 &4 in assessment process; • if public concern, 1-day mandatory mediation for each of phases 3 & 4 following peer and government review and prior to any appeal period ***Variation from existing EA waste policy, as these requirements are less than full EA requirements, consistent with requirements for similar projects across sectors***	Conformity to standard *and* purpose of EA Act *and* most reasonable design *and* reasonable location ***Consistent with individual EA requirements and with requirements for similar projects across sectors***	•ERT hearing following mediation; •maximum 10-day hearing all phases unless special permission; •intervenor funding (prescribed eligibility and approach) ***Variation from existing EA waste policy, as these requirements apply to projects subject to less than full EA requirements (i.e., category 5 projects) in order to provide greater accountability, transparency and timely results, consistent with requirements for similar projects across sectors***	1-1.5 years ***Variation from existing EA practice to provide consistency across sectors***

PROJECT CATEGORY	PROJECT TRIGGERS			PROCESS				HEARING	TIME
	BENEFITS	RISKS		PHASES	DOCUMENTS	PUBLIC ROLE & RESOURCES	APPROVAL TEST(S)		
	PROVINCIAL	ON-SITE	OFF-SITE						
5 (individual EA) ***Explicit in EA waste policy***	Not consistent with provincial policy Variation from existing practice in triggering individual EAs, in order to provide consistency across sectors	May/ may not have potential impact upon provincially/ regionally significant resource ***Variation from existing practice in triggering individual EAs; consistent with trigger requirements for similar projects across sectors***	•Potential cumulative impacts with other projects; *and/or* •potential for multi-generational nuisance and health impacts *and/or* •impacts upon provincially/ regionally significant resource ***Variation from existing practice in triggering individual EAs; consistent with trigger requirements for similar projects across sectors***	5 phases following TOR: (e.g., project description; need; alternative designs; alternative locations; cumulative impacts) ***Explicit in s.6.1 EA Act, except for cumulative impacts***	•Category 5 Assessment: prescribed form and length (100 pg plus appendices); •Category 5 Government Review (prescribed form, scope and timing for each phase, concluding with 60-day time limit at end) ***Variation from existing TOR practice for individual EAs, in order to provide consistency across sectors***	• Local and EBR notice of project proposal and each phase of assessment process; • EBR notice of completion of each stage of government review; • www-accessible documentation; • participant funding for expert peer review prior to end of each phase of assessment process; • if public concern, 1-day mandatory mediation for each phase following peer and government review and prior to appeal period ***Variation from existing TOR practice for individual EAs, in order to provide consistency across sectors***	•purpose of EA Act *and* •Conformity to TOR and/ or - need for project; - most reasonable design; - reasonable location; and -project advantages outweigh disadvantages ***Explicit in EA Act and implicit EA practice***	•ERT hearing following mediation (for each phase where TOR permits), unless frivolous; •maximum 10-day hearing per phase unless special permission; •intervenor funding (prescribed eligibility and approach) ***Variation from existing practice in order to provide consistency across sectors***	2-3 years ***Variation from existing TOR practice***

DRAFT SECTORAL POLICIES

DRAFT EA POLICY GUIDELINE: ENERGY GENERATION UNDERTAKINGS

All statutory powers of decisions under the Environmental Assessment Act regarding energy generation undertakings shall be consistent with the following energy policies and priorities:

a) Undertakings that reduce consumption of energy, provide energy from renewable sources, and result in the lowest amount of greenhouse gas emissions or air pollutants should be preferred over undertakings that have greater environmental impacts with the following hierarchy in descending order of preference:

   i. conservation, efficiency and demand-management;
   ii. renewable energy sources;
   iii. cleaner sources of energy such as natural gas, ethanol, and bio-diesel; and
   iv. coal, nuclear, and petroleum-based sources.

b) Green energy undertakings such as energy conservation, efficiency, demand management, renewable energy or undertakings that establish cleaner sources of energy shall be preferred over undertakings that would result in direct, indirect or cumulative environmental impacts from energy generation;

c) Renewable energy undertakings shall be preferred over energy undertakings that will result in air emissions in the province or in direct, indirect or cumulative environmental impacts from energy generation;

d) No energy undertaking shall be approved unless the proposal contributes to the overall achievement of Ontario's goal of reducing greenhouse gas emissions in the province, addressing the issue of climate change and increasing the proportion of cleaner energy in the overall energy supply;

e) New and emerging technologies, particularly efficiency and renewable energy technologies, that conserve or provide energy shall be encouraged, provided that such technologies are consistent with the province's general environmental assessment principles;

f) Energy undertakings shall not be sited in, nor cause adverse impacts, upon:

   i. critical habitat of endangered and threatened species;
   ii. provincially significant wetlands, valleylands, woodlands, or wildlife habitat;
   iii. provincially significant areas of natural and scientific interest;
   iv. significant areas of cultural heritage or archeological value;

g) Energy undertakings shall not be permitted in prime agricultural areas (specialty crop lands and/or Canada Land Inventory Classes 1, 2 or 3 soils), unless:

   i. the land proposed for generation purposes has not been designated for agricultural uses;
   ii. there is a demonstrable need for the energy undertaking;
   iii. there are no reasonable alternatives to the energy undertaking;
   iv. there are no reasonable alternative locations which avoid prime agricultural areas;
   v. the total land area lost is no greater than 1 hectare.

h) Additionally, the following energy generation options such as nuclear, coal, oil-based generation options shall not be sited in:

   i. lands subject to flooding or erosion hazards; or
   ii. significant or sensitive groundwater or surface water features.

i) Energy undertakings shall to the extent possible be integrated with applicable provincial and federal laws, regulations and standards and master plans so that the environmental assessment may guide and be consistent with other applicable approvals;

j) No energy generation undertaking shall be approved unless the EA planning and decision-making process has provided interested or affected communities, including First Nations, meaningful opportunities to participate, including:

   i. adequate notice of proposed decisions;
   ii. access to relevant information and resources;
   iii. sufficient opportunities to review and comment upon proposed decisions; and
   iv. involvement in post-approval monitoring programs and follow-up measures.

DRAFT EA POLICY GUIDELINE: TRANSIT/TRANSPORTATION UNDERTAKINGS

All statutory powers of decisions under the Environmental Assessment Act regarding transportation and transit undertakings shall be consistent with the following transportation and transit policies and principles.

a) Transportation or transit undertakings that move the most amount of people and goods with the lowest consumption of non-renewable resources and the least amount of emissions shall be preferred to other transportation and transit options that have greater environmental impacts.

b) Transportation and transit in Ontario shall be addressed as a provincial system. Proponents shall consider the full range of transportation options available, and seek out partnerships with co-proponents to ensure that any preferred alternative can be implemented.

c) Preference is to be given to transportation systems that:

    i. promote and expand public transit movement of goods and services utilizing high efficiency and low emission (particularly green house gases) technologies;
    ii. increase use of renewable energy sources in all aspects of transportation;
    iii. promote alternative and affordable transportation modes;
    iv. maximize energy efficiency and conservation (e.g. increase vehicle occupancy by use of high occupancy vehicle lanes and park-and-ride lots);
    v. support intensification and redevelopment in land use patterns;
    vi. strongly encourage non-motorized less-polluting transportation options (i.e. reduced dependency on private automobiles and trucks);
    vii. focus on both short and long-range transportation problems, and explore creative solutions;
    viii. are multi-modal and integrated with adjacent systems and those of other jurisdictions;

d) Planning for transportation undertakings must first establish the extent to which need can be reasonably met by non-automobile transportation modes.

e) Planning (investigations, studies, etc.) should focus on key transportation-related issues such as:

    i. sustainable alternatives;
    ii. cumulative effects;
    iii. environmental stewardship;
    iv. reducing discharge of contaminants into environment (especially hazardous materials);
    v. addressing causes and mitigating impacts of climate change;

    vi. protecting and enhancing natural habitats, 'green' spaces and water resources; and
    vii. conserving and preserving agricultural lands.

f) For transit and transportation undertakings, geographic study areas for siting should not be restricted, and ought to include all reasonable alternatives within such areas.

g) Transportation facilities and infrastructure should be appropriately located, designed, and buffered to avoid or minimize adverse effects from odour, noise, vibration and other contaminants, and to minimize risk to public health and safety.

h) Transportation and transit undertakings shall to the extent possible be integrated with applicable provincial and federal laws, regulations and standards, and master plans so that the environmental assessment may guide and be consistent with other applicable approvals.

i) No transportation or transit undertaking shall be approved unless the EA planning and decision-making process has provided interested or affected communities, including First Nations, meaningful opportunities to participate, including:

    i. adequate notice of proposed decisions;
    ii. access to relevant information and resources;
    iii. sufficient opportunities to review and comment upon proposed decisions; and,
    iv. involvement in post-approval monitoring programs and follow-up measures.

DRAFT EA POLICY GUIDELINE: WASTE MANAGEMENT UNDERTAKINGS

All statutory powers of decisions under the Environmental Assessment Act regarding waste management undertakings shall be consistent with the following waste management policies and priorities:

a) No municipal waste management undertaking shall be approved unless the proposal contributes towards the achievement of Ontario's goal of 60% or higher diversion from disposal by 2008, and a progressively higher diversion rate if the lifespan of the proposed site or facility goes beyond 2008;

b) Waste management undertakings should where possible encourage local responsibility, enjoy broad community support, and facilitate local solutions for waste management issues or opportunities;

c) Undertakings that reduce, reuse or recycle/compost waste shall be preferred over undertakings that dispose of waste, in accordance with the following hierarchy in descending order of preference:

    i. waste reduction;
    ii. waste reuse;
    iii. waste recycling/composting; and
    iv. waste disposal

d) Waste disposal undertakings should be of an appropriate size, design and type to receive not more than the volume of residual waste that cannot otherwise be diverted from disposal;

e) Incineration sites, with or without energy recovery or generation, shall be deemed to be waste disposal for the purposes of this policy guideline;

f) New and emerging technologies to reduce, reuse or recycle/compost and to recover waste shall be encouraged, provided that such technologies are consistent with the province's general environmental assessment principles;

g) Waste management undertakings shall not be sited in, nor cause adverse impacts upon:

    i. critical habitat of endangered and threatened species;
    ii. provincially significant wetlands, valleylands, woodlands, or wildlife habitat;
    iii. provincially significant areas of natural and scientific interest;
    iv. areas of significant cultural heritage or archeological value;
    v. lands subject to flooding, erosion or other natural hazards; or
    vi. significant or sensitive groundwater or surface water features or functions.

h) Waste management undertakings shall not be permitted in prime agricultural areas (specialty crop lands and/or Canada Land Inventory Classes 1, 2 or 3 soils), unless:

vi. the land proposed for waste management purposes has not been designated for agricultural uses;
vii. there is a demonstrable need for the waste management undertaking;
viii. there are no reasonable alternatives to the waste management undertaking; and
ix. there are no reasonable alternative locations, which avoid prime agricultural areas.

i) Waste management undertakings shall to the extent possible be integrated with applicable provincial and federal laws, regulations and standards, and master plans so that the environmental assessment may guide and be consistent with other applicable approvals;

j) No waste management undertaking shall be approved unless the EA planning and decision-making process has provided interested or affected communities, including First Nations, meaningful opportunities to participate, including:

i. adequate notice of proposed decisions;
ii. access to relevant information and resources;
iii. sufficient opportunities to review and comment upon proposed decisions;
iv. and involvement in post-approval monitoring programs and follow-up measures.

DRAFT GENERAL REGULATION: AMENDMENTS, ADDITIONS AND CHANGES

Suggested Changes to General Regulation 334

The General Regulation (334/90 as amended) currently applies to individual undertakings and those which may be covered by the Class EA process. It would not influence undertakings which are governed now or in future by a sectoral Regulation (e.g. O.Reg.116/01, "Electricity Projects"). It includes a grab-bag of provisions dealing with a variety of issues.

Additions or changes can be made without the need for any legislative amendments, or if necessary, after some minor house-keeping amendments of the Act's regulation-making powers. Several changes to Reg.334 could be effected in the near future, while others may require a longer time frame to implement.

The following is a list of potential changes and additions which ought to be considered, along with some illustrative and diverging comments brought forward by the three sectoral Tables.

A. SHORTER TERM CHANGES

A.1 ADDITIONS

1. A provision should be added defining environmental assessment to mean a comprehensive, information-gathering, consultative and rigorous planning and decision-making process.

    - With respect to the underlying importance providing information, the Energy Table's report states: "Better disclosure promises to promote better information management and project tracking, to enhance and facilitate public decision-making processes, and to provide better oversight and compliance risk management for proponents and regulators." (p.16)

2 A provision should be added defining strategic environmental assessment (i.e. EA review of plans and programs).

    - Notes from the Energy Table's workshop (November 8, 2004) include the suggestion of "an overall strategic EA where MOE assesses needs and alternatives province-wide" (p.6). Elsewhere it contains the suggestion that "the province should develop an Energy Policy EA with public review" (p.7).
    - The Report of the Transportation-Transit Table recommended that transportation Master Plans be processed under the Class EA process in order that "transportation network strategies such as improved transit service and TDM [Transportation Demand Management] initiatives are considered and approved on a system wide basis" (Recommendation 11.1, p.15).

3. A provision should be added explaining the acceptable range and limit of modifications by a TOR to the EA study requirements listed under sec.6.1(2) of Act, and in what circumstances. For example, a reasonable 'alternative to' can only be scoped out if it has been properly examined previously and consensus has been reached by all parties and participants that it can now be excluded.

- The Energy Table's report states that "a defensible analysis of 'alternatives to' is necessary to ensure appropriate public accountability for decisions made on energy projects (subject to the Act) because it is at this strategic decision-making point when the most dramatic changes can be made to reduce and avoid environmental impacts" (p.8).

- Members of the Waste Table support "the suggestion that a Regulation is the preferred vehicle to clarify the EA Terms of Reference requirements" (memo to Executive Group Chair on November 23, 2003). The Table's report calls for MOE to "develop a framework regulation for Terms of Reference for waste management undertakings" (p.2). It states that "this regulation should set out the rationale, the reasonable functional 'alternatives to' and 'alternative methods', and should recognize that conceptual planning and decision-making prior to commencing the environmental assessment may contribute to the development of the content of the terms of reference" (p.9). See its Recommendation no.4 (p.10).

- The Report of the Transportation-Transit Table notes: "Some proponents undertake individual EAs that are very narrow in terms of scope, needs justification, public involvement and consideration of alternatives. Some proponents propose projects that satisfy their particular mandate without regard to other solutions outside their primary mandate" (p.9). The Report's Recommendation 4.1 calls for establishing "EA practice guidelines which require proponents to meaningfully consider all reasonable alternative solutions irrespective of their agency/business mandates."

- The Summary Notes from the Transportation-Transit Workshop (Appendix II of the Report of the Transportation-Transit Table) refer to the need for "clear guidelines from MOE related to format or contents of scoping justification," and that it should be "consistent with" the Act (p.25).

- A written submission to the Transportation-Transit Table from a participant in its workshop (at Appendix IV of the Report of the Transportation-Transit Table) states that the Act provides no guidance "in identifying reasonable Alternatives to the Undertaking" (p.34). It notes that proponents "want to ensure that their project emerges as the preferred alternative" and accordingly their Alternatives-To "have not contemplated stakeholder objectives" but "rather reflect the objectives of the proponent." Further, they "are evaluated in a subjective manner with the proponents' objectives / criteria dominating the process."

4. A provision should be added identifying that Class EA's are appropriate only with respect to those undertakings or types of undertakings which are routine, frequently occurring, similar in nature, have a predictable range of effects, cause only minor environmental impacts, and are responsive to mitigating measures.

   - Written submissions to the Transportation-Transit Table from a participant in its workshop (at Appendix IV of the Report of the Transportation-Transit Table) noted "concerns about the projects which have been or are being planned using the Class EA process for road and water / waste-water related projects. These concerns are generally related to projects which commence under the provisions of the Class EA process but which have significant impacts and warrant individual EA treatment; and/or have piecemealing impacts." (p.48)

5. A provision should be added defining "rationale" to include "demonstrable need."

   - A written submission to the Transportation-Transit Table from a participant in its workshop (at Appendix IV of the Report of the Transportation-Transit Table) noted that with "many transportation projects, need is simply accepted because certain projects hae been 'on the books' for decades, though they have not been identified as a result of rigorous public / multi-stakeholder planning process" (p.33).

   - The following recommendation was included in one submission: "Proponents must commit to public consultation / stakeholder workshops very early in the process - prior to the development of the TOR - to identify with all stakeholders the objectives that should guide the "Needs / Justification" studies that are conducted in the EA study itself, or included in a scoped TOR if that is appropriate." (p.34)

   - Another submission noted that "proponents often pursue projects which are being proposed to address perceived problems. True, meaningful engagement of the stakeholders is essential to ensure that the solutions address the broad community need." (p.46)

6. A provision should be added stating that before a scoping or time-limit order is considered by Minister with respect to an upcoming ERT hearing, the ERT hearing panel will first be asked to consult with the parties and report to the Minister with recommendations as to what, if anything, would be reasonable and appropriate under all of the circumstances.

A.2 CHANGES

1. The provisions listed in (a) through (f) of sec.5(1.1) should be removed. Costs such as land acquisition, design costs, building construction and equipment are considered elsewhere as integral parts of an undertaking.

   - In a recent and controversial municipal project, a development of approximately $50 million was subjected to an interim court injunction over residents' concerns about environmental and health impacts. There had been no EA (individual or Class MEA) undertaken because all of the above-noted exclusions combined allegedly left the project below the $3.5 million threshold.

2. Section 5(6) should provide that if the condition as to compliance with the Act is breached, the option or agreement to purchase land, or an interest in land, shall become null and void.

3. Section 11 regarding the exemption of research undertakings – see Recommendation in Volume I.

B. LONGER TERM CHANGES

B.1 ADDITIONS

1. A provision establishing a participant funding program should be added, in order to support the consultation efforts conducted by proponents.

   - The Waste Management Table's report notes that EA "should include opportunities and resources for participation by all potentially affected parties" (p.5). It calls for MOE "to articulate clear rules for the participation of affected parties, and to define when it would be appropriate for proponents to provide financial assistance to participants" (p.12). See its Recommendation no.6.

   - Written submissions to the Transportation-Transit Table from one participant in its workshop (at Appendix IV of the Report of the Transportation-Transit Table) included the recommendation that "funding be provided to ngo's / community groups / individuals during the EA so as to enable meaningful participation and input" (p.32).

   - Another participant noted that funding "is especially important to ensure that low income neighbourhoods (who are usually the most impacted by Schedule B and C projects) can participate fully" (p.42).

   - Notes from the Energy Table's workshop (November 8, 2004) includes the following observation: "The public should be involved early. Provide funding for this. This also helps keep the proponent honest and perceived to be honest, and allows people opportunity to get advice geared to their issues." (p.7).

2. A provision should be added establishing minimum standards for public consultation and participation in EA planning and decision-making, and directing that ADR should be employed to attempt to resolve disputes that arise during the process..

   - The Waste Management Table's report calls for the MOE to "develop clear specific guidelines for the type, form and level of public participation, emphasizing a range of approaches" (p.3).

- The Summary Notes from the Transportation-Transit Workshop (Appendix 2 of the Report of the Transportation-Transit Table) raise the concern that "often public do not have confidence that they've been listened to" (p.25). The "need for collaborative stakeholder consultation processes rather than just public information sessions" is identified (p.26).

- The Summary Notes observe that "now there is no ADR process" and that it "might be helpful if it streamlines process" (p.27). There is the suggestion that "ADR should be independent of MOE" (p.26), and that "MOE should not assign staff to ADR but should recommend when a mediator should come in" (p.27).

- The Report of the Transportation-Transit Table noted: "Proponents of highly complex individual EAs sometimes do not recognize the needs of the affected stakeholders in relation to their ability to obtain and comprehend complex materials and make an informed response" (pp. 14-15). The Table recommended, among other things,

    - "minimum public participation thresholds and time frames" that meet "local community needs" (Recommendation 10.1);
    - "practice guidelines which encourage proponents to consult as early as possible" and "how to be responsive to changes in the process" (Recommendation 10.2);
    - "a best practises document on effective public consultation" (Recommendation 10.3).

- Written submissions to the Transportation-Transit Table from a participant in its workshop (at Appendix IV of the Report of the Transportation-Transit Table) the noted that "approaches to stakeholder consultation must change dramatically" if the "betterment of the people of Ontario" is to be achieved (p.29). "Stakeholder consultation is the component of EA studies to which proponents, including government proponents, devote the least time and fewest resources. It tends to be viewed as a hurdle - a requirement of the EA that must be met" (p.30). They "often encourage 'one-on-one' meetings, or meetings with individual groups, but generally avoid collaborative, multiple stakeholder sessions."

- Another participant's submission stated: "Routine public information centres are not sufficient to allow the public to understand the process and the details of the project" (p.46). It notes that "environmental non-governmental organizations and individuals experience great difficulty in providing comments because of the generality of the TOR and the fact that they are posted only on the ministry's website. This situation weakens the whole EA process since the TOR limits the scope of what will be subsequently studied." (p.50)

- The following recommendation is included in the Energy Table's report: "That effective consultation provisions be incorporated into one window process through the office of the [proposed] process coordinator to enhance public consultation and to promote the education of the public about the environmental assessment process" (p.18).

- Notes from the Energy Table's workshop (November 8, 2004) includes the following observation: One measure of success is that the public feels like their concerns have been heard and issues validated." With respect to ADR it noted: "Role of mediation needs to be clarified. Mediation exists in theory but it is rarely used because the parties are reluctant to be the first to go through it." (p.7)

3. A provision should be added requiring a comprehensive process, including public consultation and participation, in the event that sectoral Regulations under the Act are to be amended in future by altering the thresholds applying to the various categories of undertakings and how they are to be processed.

4. All individual and Class EA's should be required to include the following post-approval procedures: inspection protocols, compliance and abatement measures, routine monitoring, reporting, public notification and independent audits or peer reviews.

   - The report of the Energy Table states: "More stringent monitoring provisions are required to ensure that proponents comply with the Electricity Regulation including compliance with commitments and conditions contained in Screening and Environmental Review Reports ..." (p.25). Notes from the Table's workshop (November 8, 2004) include the suggestion that transparency be increased "by providing information so that people know commitments made by proponents are kept" (p.6). This could be done by posting "follow-up measures on a registry like the federal EA process."

   - Written submissions to the Transportation-Transit Table from a participant in its workshop (at Appendix IV of the Report of the Transportation-Transit Table) stated that "monitoring and reporting on post-construction effects and mitigation is problematic. Are the conditions of approval monitored? Does the information learned on one project get carried forward or transferred to improve the next project? How does an individual or ENGO access the information? How are cumulative impacts assessed? Who guarantees the authenticity of the data and information and study results? How can a group ... be assured that our concerns have been addressed when the issues are raised?" (p.50)

B.2 CHANGES

1. The minimum cost threshold of $3.5 million in sec.5(2)(a) should be reviewed and possibly reduced.

   - The Report of the Transportation-Transit Table states that this exemption should be increased to $10 million: "There appears to be no rationale as to why the $3.5 million exemption limit which has stood for many years has never been updated to reflect today's capital program cost realities" (pp. 6-7).

2. Section 5(2)(c) should be amended to limit its operation to those drainage works which will not affect a significant wetland area.

3. Section 6(10(k) - the issue of whether the Minister of Agriculture, Food and Rural Affairs should remain on the list of exempt departments ought to be reviewed.

4. Section 9 should be removed. Similar to CEAA, if the government makes a loan, gives a grant, etc. to a private sector party carrying out an undertaking party which would otherwise be governed by the Act if the government itself carried out the undertaking, the Act should be triggered and apply to that undertaking.

ONTARIO ENVIRONMENTAL ASSESSMENT REVIEW: PROGRESS REPORT

Submitted to
The Hon. Leona Dombrowsky
Minister of the Environment

PREPARED BY THE
Minister's Environmental Assessment Advisory Panel: Executive Group

October 8, 2004

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INTRODUCTION: SCOPE AND PURPOSE

1. In June 2004, the Provincial Government approved the creation of a Minister's Advisory Panel (consisting of an Executive Group and three Sectoral Tables)[1] to provide recommendations on reforming Ontario's environmental assessment (EA) program, particularly as it relates to three sectors: waste, energy and transit/transportation (see April 5 2004 and June 25 2004 Press Releases in Appendices 1 and 2). The Advisory Panel was established under the authority of section 31 of the *Environmental Assessment Act* (EA Act). According to the Advisory Panel's Terms of Reference (see Appendix 5), the Advisory Panel's mission is to address the following goals:

    a. **Revitalize** the EA program providing clear, prescriptive rules for appropriate environmental planning and decision-making.
    b. **Rebalance** EA decision-making by setting out clear roles for all participants.
    c. **Refocus** the EA process such that the level of assessment/review of proposed undertakings reflects the potential that proposals have to positively or negatively impact the environment as defined by the EA Act.

2. Beyond these general goals, the Minister has also sought the Advisory Panel's advice on two specific concerns. The first concern is that undertakings which provide positive contributions to Ontarians'quality of life (i.e. public transit or energy generation from renewable sources) may face major obstacles or delays in the existing EA program. The second concern is that the present EA program lacks focus on basic objectives: sustainability, predictability, clarity, fairness and consistency. To address such concerns, the Executive Group developed a "Challenge Statement" (see Appendix 3) to guide the Advisory Panel's deliberations regarding potential changes to Ontario's EA program.

3. The membership of the Executive Group was finalized in June, and members were invited to participate in an introductory session in July with Ministry staff. The Executive Group began its detailed work in late August, 2004. Since then, the Executive Group has met eleven times, on a weekly and sometimes twice-weekly basis, for half-day meetings. Meetings have also included regular contact with the Minister's office and Ministry staff, including representatives from Legal Services Branch, Strategic Policy Branch, and Environmental Assessment and Approvals Branch (EAAB).

4. The Executive Group's work is predicated on the Minister's clear commitment to environmental assessment, which we share. In our view, the current debate is not whether Ontario needs a statute-based EA program; instead, the question is how Ontario's EA program can be strengthened and improved in order to reflect the above-noted goals of revitalizing, rebalancing and refocusing EA planning and decision-making.

5. The Minister also appointed individuals with experience in various aspects of the EA process to three Sectoral Tables in relation to waste, energy and transportation/transit. Some members of the Sector Tables were appointed in June, and additional members are in the process of being appointed. The three Sectoral Tables will provide recommendations to the Executive Group, which will be considered and incorporated into the final report. The Executive Group looks forward to working with the Sectoral Tables to achieve the above-noted aims and goals.

6. The Executive Group delayed submission of the progress report until it had the opportunity to meet with the three Sectoral Tables. These initial meetings occurred in late September and early October, 2004 and many more meetings have been scheduled by the Sector Tables.

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[1] A list of Executive Group membership can be found in Appendix 6. Members of the Advisory Panel reflect a range of stakeholder groups and perspectives including: the academic community; the legal community; the affected industries; urban and rural municipalities; the non-governmental environmental community; and the environmental consulting community.

ACKNOWLEDGEMENTS

7. The Executive Group has been greatly assisted in its work to date by various Ministry staff, particularly Blair Rohaly, Project Manager. The Executive Group also expresses its appreciation to Chris Gore and Anne Wordsworth for their invaluable efforts in assembling this progress report and generally assisting the work of the Advisory Panel.

8. It should be noted that this progress report is intended to update the Minister on our ongoing work, and does not represent government policy or commitments regarding EA reform. It should be further noted that members of the Executive Group and the Sectoral Tables possess considerable experience in Ontario's EA regime, and they have freely shared their views, insights and suggestions to ensure that the Advisory Panel fulfills its mandate in a timely manner. The participation of all members in the Advisory Panel initiative does not necessarily bind their respective organizations to the specific findings or recommendations within this progress report.

9. Nevertheless, the constructive dialogue that has occurred to date within Advisory Panel meetings reaffirms the practicality and desirability of developing EA reforms on a consensus basis. As the work of the Advisory Panel is disseminated for review and comment, it is reasonable to anticipate that additional EA reform issues will be identified for consideration by the Advisory Panel and the Minister.

APPROACH TO EA REVIEW

10. The Executive Group has identified the need for EA proponents and participants to receive much clearer guidance about procedural and substantive requirements, and to ensure increased consistency within and amongst sectors subject to the EA Act. Therefore the Executive Group is approaching its mandate with two initial objectives: first, to seek to incorporate existing and proposed provincial policy directly into Ontario's EA program; and, second, to seek to develop a consistent framework for EA obligations between and within the waste, energy and transportation/transit sectors.

11. Regarding EA policy, the Executive Group has drafted and provided to the Sectoral Tables preliminary proposals for principles and policies that could guide the EA process, drawn directly from the proposed Provincial Policy Statement (PPS) to be issued under the *Planning Act*, from various existing Ministry Statements of Environmental Values (SEVs) issued under the *Environmental Bill of Rights, 1993*, and from other governmental policy commitments or discussion papers. The Executive Group's suggestions are also based on a desire to create an EA regime in Ontario which encourages and supports undertakings which produce social, economic and environmental benefits.[2] The Executive Group is currently awaiting responses from each Sectoral Table in relation to these initial proposals.

12. Regarding the EA framework, the Executive Group was mindful of the existing legislative and regulatory context. However, the Executive Group deliberately chose, at this preliminary stage, to pursue consistency and fairness between and within sectors, rather than trying to reconcile its suggested framework with existing Class EAs or other current regulatory requirements. The Executive Group has drafted and provided a proposed framework to the Sector Tables and is currently awaiting responses.

13. More specifically, the Executive Group has sought to lay the foundation for a more equitable and predictable path of EA planning and decision-making that can be readily understood by proponents, participants and public agencies. By equity, the Executive Group means an EA process where undertakings in all sectors are subject to the same general criteria and procedures for assessment, particularly when projected impacts and benefits are similar. In addition the Executive Group suggests that the required substance and process for any undertaking should be clearly related to its environmental risks and benefits. By predictability, the Executive Group means

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[2] See Gibson, Robert B. "Specification of sustainability-based environmental assessment decision criteria and implications for determining 'significance' in environmental assessment". A paper prepared for the Research and Development Monograph Series, 2000. http://www.ceaa-acee.gc.ca/015/0002/0009/print-version_e.htm. Accessed, July 14, 2004.

an EA process where all stakeholders – proponents and other participants – can clearly identify and understand how an EA will take place well before the planning and decision-making process begins for a specific undertaking.

14. The Executive Group's proposals are aimed at achieving the necessary EA improvements through regulatory, policy and administrative reforms, rather than through wholesale legislative reform.

15. The remainder of this progress report addresses three topics: 1) issues for further consideration; 2) opportunities for immediate EA improvements; and, 3) next steps.

Issues for further consideration

16. Based on the Executive Group's work to date, we have identified the following issues and questions, which we will be addressing in our future deliberations. Accordingly, we welcome and encourage input on this list. Please note that this list of questions is not exhaustive, nor hierarchical.

    a. In Ontario, both the public and private sectors carry out undertakings that may create environmental risks and benefits. However, public sector undertakings are generally subject to the EA Act (unless exempted), and private sector undertakings are generally not subject to the EA Act (unless designated). Should the nature and extent of EA requirements be based upon the degree of environmental risks/benefits associated with an undertaking, rather than on the size of the proposed undertaking or whether the proponent is a public or private entity?

    b. Under the current EA regime, the waste, energy and transportation/transit sectors deal with the issue of alternatives in different ways. Need and alternatives are at the heart of the EA Act. How can or should alternatives be equitably addressed in each sector?

    c. At the present time, can First Nations, communities and stakeholders effectively participate in the planning, approval and monitoring of undertakings subject to the EA Act? If not, how can this situation be rectified? Should community members be given a seat at the planning table, and a voice in decision-making? If so, how and under what circumstances?

    d. Has the approval of undertakings been affected or delayed by the lack of provincial policy, guidelines or siting standards under the EA Act? If so, how can this situation be rectified?

    e. Section 11 of Ontario Regulation 334 currently exempts "research undertakings" from EA requirements under the EA Act. To encourage new and emerging technology, should the "research" exemption be amended to expressly include appropriate demonstration projects within the three sectors? If so, which types of research projects (or thresholds) should trigger the exemption, and which types of research projects should be subject to EA requirements?

    f. Is there a need to inject more flexibility into the EA deadlines prescribed by the timelines regulation (O.Reg. 616/98)? Are there opportunities to adjust or shorten the prescribed deadlines without compromising the EA planning and decision-making process?

    g. Currently, sectoral Class EAs and the electricity regulation (O.Reg. 116/01) allow the public to request that a particular project be subjected or bumped up to a more rigorous level of assessment. Are these processes working fairly and effectively? If not, how could this be improved or reformed?

    h. What role should hearings play in EA? Who should decide and upon what criteria should a hearing be triggered? Should there be time limits on hearings? Should these time limits be related to the perceived risks and benefits of an undertaking? Should the mandatory hearing requirements in other statutes (e.g., EPA and OWRA) be excluded on the basis that the undertaking has been exempted or approved under the EA Act without a hearing? If hearings are held should they necessarily be formal and adversarial, or is there a role for informal sessions?

i. Currently, the EA Act imposes public consultation requirements but makes no provision for funding the participation of the public in the EA process. Should there be participant and peer review funding? If so, how and under what circumstances?

j. Currently, the EA Act is administered by the Minister, the ERT (Environmental Review Tribunal) and the EAAB (Environmental Assessment & Approvals Branch). Is there a need for another body to facilitate ADR and to provide advice to the Minister?

k. Currently, the *Consolidated Hearings Act* is rarely used where more than one public hearing is triggered by an undertaking. Should the regulations under this Act be amended to ensure that there are not multiple hearings for the same undertaking?

Opportunities for immediate EA improvements

17. In its meetings to date, the Executive Group has reviewed and discussed potential opportunities for immediate improvements to Ontario's EA program, especially in relation to the three sectors. However, over the course of these discussions, it became readily apparent that a number of possible short-term reforms are, in fact, directly or indirectly related to the substantive and procedural issues being considered for longer term reform by the Advisory Panel. Therefore, the Executive Group is of the view that, for the most part, short-term reforms should not be developed separate and apart from longer term reforms. Accordingly, we anticipate that the Advisory Panel's final report will contain a comprehensive and integrated set of recommendations for short- and longer term regulatory, policy and administrative reform.

18. Nevertheless, the Executive Group has been able to identify some discrete "stand alone" issues that could be the subject-matter for immediate improvements in the EA program. These suggestions include:

    a. The creation of an Inter-Ministerial Working Group. This group could, for example: 1) update or develop protocols for agency review of EA documentation under both individual and Class EAs; 2) integrate EA with other land-use planning and resource management statutes and programs; and, 3) relate EA to proposed growth management strategies.
    b. Development of an electronic public registry where the public can access current information about: 1) Ontario's EA program, including regulations, policies, approvals, declaration orders and other instruments; and, 2) any undertaking or project undergoing environmental assessment whether through individual or class assessment.

19. In addition, the Executive Group has received two suggestions from the Transportation/Transit Sector Table:

    a. That "bump up" provisions for traffic calming be removed from the environmental assessment process; and, that requirements for advertising traffic calming proposals be amended so that municipalities have the discretion to develop their own public notice proposals;
    b. That transit projects be covered under the existing MEA Municipal class environmental assessment process by changing the definition of "linear paved facility" so that it means "facilities which utilize a linear paved surface including road lanes, or lanes in an exclusive right-of-way for HOV lanes, bus lanes or transit lanes". The present definition is restricted to "facilities which utilize a linear paved surface including road lanes, HOV lanes, bus lanes or transit lanes".

20. Having received these suggestions during the final stages of drafting the progress report, we forward them without their having been evaluated by ourselves or by Ministry staff. The Executive Group will carry out this evaluation in preparing the final report.

Next Steps

21. Under the Terms of Reference, the Sector Tables have been requested to carry out workshops and report back to the Executive Group by October 31, 2004. Considering that the Sector Tables just began meeting, it seems reasonable to extend this deadline to Friday, November 19, 2004.

22. The Executive Group has tentatively scheduled eleven additional weekly meetings during October, November and December. In addition, one, and often two executive members are participating in the weekly Sectoral Table meetings.

23. We intend to adhere to the Executive Group's original deadline of December 31, 2004. We look forward to working with the Sectoral Tables and Ministry staff to provide you with recommendations addressing the improvements that you seek.

Last Modified: Monday April 05 2004

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Environment

Location: Ministry Home > News > 2004 News Releases > Media Backgrounder

Media Backgrounder

April 5, 2004

WASTE MANAGEMENT STRATEGY

In keeping its commitment to clean, liveable communities, the McGuinty government has announced a strategy to better manage Ontario's waste and reduce the province's reliance on landfills.

The government's strategy is a focus on achieving 60 per cent waste diversion.

Discussion Paper on 60% Waste Diversion

There is a waste management challenge in Ontario today. The continued export of Ontario waste, particularly from the Greater Toronto Area (GTA), to the United States is cause for concern. GTA municipalities have not been able to develop a sustainable, Ontario-based, long-term waste management solution.

Increasing the diversion of non-hazardous waste from disposal will help to meet this challenge and achieve the government's commitment to clean, liveable communities with the key result of reducing the rate of green space lost.

To achieve this goal, the government will release a discussion paper on options for achieving 60 per cent waste diversion from disposal and how they might be implemented in an economic and practical manner. The paper will include the following for discussion:

- Setting province-wide diversion objectives
- Setting diversion targets for residential waste that could be achieved through improvements to municipal blue box programs and increased composting
- Accelerating and expanding centralized composting in Ontario's largest municipalities
- Developing a financing strategy for centralized composting, including cost recovery mechanisms, municipal revenue generation, public-private partnerships, shared infrastructure agreements, and provincial assistance in the form of grants or loans
- Examining feasibility of phasing in a ban on organics and other recyclable materials in Ontario landfills
- Introducing new options for source separation for the industrial, commercial and institutional (IC&I) sectors
- Considering new and emerging waste management technologies
- Promoting packaging reduction and the increase of recycled content in paper and packaging
- Undertaking public education and awareness activities to promote 3Rs (reduce, reuse and recycle)
- Initiating province-wide tracking of waste going to landfill or export

Improvements to the Environmental Assessment Process

As the government moves forward to increase waste diversion, actions need to be taken to improve the environmental assessment (EA) process to support its waste management objectives.

approaches to improving the environmental assessment process for waste management facilities, transit and transportation projects and clean energy facilities.

Panel members would include representatives from the municipal, waste management and clean energy sectors, the environmental community, academics, the consulting industry and the legal community.

The advisory panel will be asked to ensure recommendations maintain, or enhance, existing levels of environmental protection.

The advisory panel will:

- identify key impediments to obtaining timely approvals for projects subject to the environmental assessment process; and
- examine the existing environmental assessment process and identify potential improvements by category of activity (e.g., in the areas of guidance, the review process, the environmental assessment approvals process, other approvals necessary following environmental assessment approval).

Cooperation on Environmental Assessment Process

A draft framework agreement between Ontario and the federal government on environmental assessment cooperation, to be released for comment, will provide a cooperative process for those projects subject to both federal and provincial environmental assessment legislation. The draft agreement will outline the roles and responsibilities for each level of government.

Projects that are typically subject to both Acts include municipal or provincial projects that require federal environmental certificates, permits, licenses, or involve federal funding, like transportation infrastructure.

The agreement leaves legislative or decision-making responsibilities of each government intact. Any projects requiring both provincial and federal EA approvals will still require separate approvals. The goal is to avoid the unnecessary duplication, delays and uncertainty that could arise from separate environmental assessment processes while, at the same time, protecting the environment.

–30 –

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Ministry of the
Environment

Location: Ministry Home > News > 2004 News Releases > News Release

News Release

For immediate release
June 24, 2004

PANEL TO REVIEW ONTARIO'S ENVIRONMENTAL ASSESSMENT PROCESS AND RECOMMEND IMPROVEMENTS

Changes Will Foster Clean, Livable Communities

TORONTO –The Ontario government has formed an advisory panel to recommend ways of improving the province's environmental assessment process, Environment Minister Leona Dombrowsky announced today.

improvements to the province's environmental assessment process," Dombrowsky said. "We're delivering on that promise."

The advisory panel, made up of experts from academia, industry, the legal profession and municipalities, will be led by Dr. Beth Savan, an environmental scientist and a professor in the environmental studies program at Innis College, University of Toronto.

The panel will look at approaches to improving the environmental assessment (EA) process for waste management facilities, transit and transportation projects, and clean energy facilities. It will look at other approaches to the EA process, consider how to establish clear roles for impacted communities and recommend clear, prescriptive rules for locating facilities with the potential for significant environmental impacts.

The panel will deliver its recommendations to the minister in late summer.

-30 -

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See also:

- Media Backgrounder: Members of The Minister's Advisory Panel on Environmental Assessment in Ontario

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APPENDIX 3: EA ADVISORY PANEL CHALLENGE STATEMENT

The challenge identified by the Environment Minister's EA Advisory Panel is how to improve the environmental assessment regime of Ontario in order to ensure fair, balanced, comprehensive, transparent, accessible, inclusive and participatory environmental planning and decision-making for all undertakings (plans, policies, programs and projects) governed by the *Environmental Assessment Act*, resulting in outcomes that maximize sustainability –

While at the same time providing for the benefit of all proponents and other participants, particularly in priority sectors (waste management, clean energy and transportation-transit), an effective process that is reasonably:

- efficient (with respect to cost);
- timely (with respect to speed);
- clear (with respect to rules);
- disciplined (with respect to process);
- independent (non-biased and apolitical);
- flexible (adjustable where appropriate to time constraints, size of undertaking, level of potential environmental impacts, etc.); and,
- sensitive to specific context (including individual sectoral needs and differences).

EBR Registry Number: XA04E0015 **Type of Notice:** Information

Ministry: Environment **Status of Notice:** Information

Date Information Notice Posted: 2004/09/20

INFORMATION NOTICE

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This notice was re-posted on September 20, 2004 to include text that had not previously been translated.

Title :

Improvements To Ontario's Environmental Assessment Process

General Reason for Notice:

This notice is for your information. The Environmental Bill of Rights does not require this notice to be placed on the Environmental Registry, however, section 6 of the Act does allow the Environmental Registry to be used to share information about the environment with the public.

Further Specific Explanation:

The Ontario government has formed an advisory panel to recommend ways of improving the province's Environmental Assessment process. The formation of the panel delivers on a government promise to improve the Province's environmental assessment process.

The goals of this initiative are as follows:

Revitalize the EA program providing clear, prescriptive rules for appropriate environmental planning and decision-making.

Rebalance EA decision-making by setting out clear roles for all participants.

Refocus the EA process such that the level of review/assessment of undertakings reflects the potential that each proposal has to positively or negatively impact the environment as defined by the Environmental Assessment Act.

The Ministry, on behalf of the Panel, is seeking input from all stakeholders and interested parties on opportunities to improve Ontario's Environmental Assessment (EA) process. Submissions related to this issue are welcomed before October 31, 2004.

Included in this posting are a copy of the Panel's Terms of Reference, and a listing of all Panel members. The Panel will provide the Minister with recommendations in the form of a report by December 31, 2004. The Panel has been asked to:
- identify key impediments to obtaining timely approvals for projects in the key sectors subject to the environmental assessment process (i.e. waste, transit/transportation, and cleaner energy); and
- examination of the existing environmental assessment process and identification of potential improvements to such areas as:
- prescriptive requirements and technical and policy guidance;
* government review process;
* decision-making/approval process;
* public participation;
* transparency and accountability; and
* monitoring.

Short Description:

On April 5, 2004, the Minister announced her intention to set up an advisory panel of expert practitioners to develop proposals on possible approaches to improving the environmental assessment process for waste management facilities, transit and transportation projects and clean energy facilities.

The formation of the Panel was part of the Minister's announcement related to the development of a Waste Management Strategy.

Development of new waste management systems/facilities (whether for diversion or disposal), requires lead time for planning, development, approvals and implementation – it is not unusual for waste management facilities to take several years to obtain necessary ministry approvals. Consideration must be given to enhancing the quality and timeliness of such decision-making.

There are also certain other sectors which could benefit from new ideas and opportunities. These include the transportation and transit sector, and the cleaner energy sector.

Improvements to the EA process would also help support the government's energy strategy by facilitating new "clean" electricity projects which could help replace generation capacity lost when coal fired plants are phased out.

Panel members include representatives from the municipal, waste management and clean energy sectors, the environmental community, academics, the consulting industry and the legal community.

The advisory panel is being chaired by Dr. Beth Savan, an environmental scientist and a professor in the environmental studies program at Innis College, University of Toronto.

In addition to Dr. Savan, other members of the Panel Executive include:

David Estrin - Gowlings (Lawyer)
Rod Northey - Birchall Northey (Lawyer)
Richard Lindgren – Canadian Environmental Law Association (Lawyer)
Alan Levy - Lawyer

Other panel members include:

Howard M. Goldby - Vice-President-Environmental Health & Safety, BFI Canada Inc.
Nigel Guilford - President and Director, Ontario Waste Management Association
David Kaufman - General Manager-Transportation Services, City of Toronto
Paul Norris - President, Ontario Waterpower Association
Janine Ralph - Manager, Waste Policy & Planning, Regional Municipality of Niagara
John Sutherns - CEO, McCormack Rankin Corporation
Usman Valiante - environmental consultant
Adam White - Vice President, Public Relations & External Affairs, Ontario Energy Association
David Leckie – On behalf of the Ontario Good Roads Association, Director Roads and Transportation, City of London
Paul Knowles – On behalf of the Municipal Engineers Association, Chief Administrative Officer, Town of Carlton Place
Michael Wolczyk - Manager, Marketing and Planning, GO Transit

The Panel Executive has developed a "Statement of Challenge" to guide them in addressing the task they have been asked to take on the by the Minister. It is articulated as follows:

"The challenge identified by the Environment Minister's EA Advisory Panel is how to improve the environmental assessment regime of Ontario in order to ensure fair, balanced, comprehensive, transparent, accessible, inclusive and participatory environmental planning and decision-making for all undertakings (plans, policies, programs and projects) governed by the Environmental Assessment Act, resulting in outcomes that maximize sustainability.

While at the same time providing for the benefit of all participants, particularly in priority sectors (waste management, clean energy and transportation-transit), an effective process that is reasonably:
-efficient (cost),
- timely (speed),
- clear (established rules),
- disciplined,
- independent (non-biased and apolitical),
- flexible (adjustable where appropriate to time constraints, size of undertaking, level of potential environmental impacts, etc.) and
- sensitive to specific context (including individual sectoral needs and differences).

Other Public Consultation:

A hyper-link to the Terms of Reference is provided at the end of this notice

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Additional material in support of this notice is available by clicking the following hyperlink(s):

http://www.ene.gov.on.ca/envision/env_reg/er/documents/2004/XA04E0015.pdf

APPENDIX 5: TERMS OF REFERENCE

Section 1 – Purpose

The Provincial Government has approved the creation of a Minister's Advisory Panel to provide recommendations on certain issues related to Ontario's existing environmental assessment ("EA") program, in keeping with the following goals:

1. **Revitalize** the EA program providing clear, prescriptive rules for appropriate environmental planning and decision-making.
2. **Rebalance** EA decision-making by setting out clear roles for all participants.
3. **Refocus** the EA process such that the level of assessment/ review of proposed undertakings reflects the potential that proposals have to positively or negatively impact the environment as defined by the Environmental Assessment Act.

Section 2 - Scope of Panel Work

The scope of the Advisory Panel's work is to:

- Enhance the efficiency, effectiveness, and fairness of EA decision-making, while ensuring that any measures to improve timeliness of decisions do not compromise the quality of the assessment required, but enhance existing levels of environmental protection;
- identify early the issues related to environmental assessment requirements for three sectors: (1) waste management , (2) transportation (including transit) , and (3) clean energy (e.g. wind, solar, co-generation, and small-scale hydro); and
- examine the existing environmental assessment process and identify potential improvements to such areas as:
    - prescriptive requirements and technical and policy guidance;
    - government review process;
    - decision-making/approval processes;
    - public participation;
    - transparency and accountability; and
    - monitoring.

Other issues may be referred to the Advisory Panel by the government if the need arises. Should the Panel wish to pursue or consider issues/matters beyond the scope of work set out in Section 2, it may do so with the approval of the Minister.

Section 3 – Composition

The Advisory Panel will be made up of members reflecting a range of stakeholder groups and perspectives including:

- the academic community;
- the legal community;
- the affected industries;
- urban and rural municipalities;
- the non-governmental environmental community; and
- the environmental consulting community.

The Minister will appoint members by name to the Panel with the authority provided by Section 31(1)(g) of the *Environmental Assessment Act.*

No substitutes for Panel members will be permitted unless approved in advance in writing by the Minister (or designate). Should a member be unable to complete their term on the Panel, the Panel may recommend to the Minister a representative from the particular community noted above to replace the sitting member. Such a recommendation must be accompanied by an appropriate rationale. The Minister may appoint a new or replacement member without a recommendation from the Panel.

The Chair may request that the Minister remove and replace any member of the Panel at any time. Such a request must be made in writing, accompanied by an appropriate rationale.

Section 4 - Panel Governance and Support

This Advisory Panel consists of a chairperson and individual panel members reflecting a variety of different stakeholder groups and perspectives.

In order to focus efforts, and enhance efficiency, the Advisory Panel will be structured as follows:

Executive Group – Legal, Academic, Community representatives

Waste Management Table - Waste Management industry, non-governmental organizations and municipal representation.

Transportation/Transit Table – EA practitioners from the transportation and transit sectors, as well as non-governmental organizations and municipal representation.

Cleaner Energy Table – Industry practitioners, non-governmental organizations and municipal representation.

The Executive Group will provide direction and guidance to the Sector Tables. This may take the form of separate Terms of Reference, focusing questions to be answered, a combination of both, or other means. Such direction will be shared with the Minister's office for discussion prior to being conveyed. The direction will include a timeline for prompt reporting of Sector Table findings and recommendations to the Executive Group.

The Executive Group will be expected to convene at least 4 meetings. The dates, times, location and format of these meetings will be determined by the Chair in consultation with the Executive Group members. The Executive Group may choose to meet jointly with one or more of the Sector Tables.

One or more Executive Group members may sit at the Sector Tables to provide leadership and direction. The appropriate Executive Group members will be identified by the Chair.

An Environmental Bill of Rights notice early in the Panel process will announce the Panel Terms of Reference, Challenge Statement, membership, a contact person, and opportunities for written submissions to the Executive Group. The Waste Management, Transportation/Transit and Clean Energy Tables are each to undertake a workshop with stakeholders, as well as convene at least one follow-up meeting to develop their findings. Such stakeholders may include, but would not be limited to municipalities, industry, environmental groups, associations or organizations with a significant interest in Ontario's environmental assessment program. The results of these meetings will be provided to the Panel's Executive Group for consideration in their development of the recommendations to the Minister.

Administrative support, as requested, will be provided by the staff of the Ministry of the Environment. Ministry staff will develop materials to support the Panel, at their request, to assist in assessment of issues. The Ministry, on behalf of the Advisory Panel, will secure the services of two consultants to assist in reporting on meetings, and in preparing the reports for the Executive Group and Sector Tables, respectively. No provision is provided for any technical consulting support, as such expertise is available from the Panel members themselves.

Panel members will receive reimbursement for reasonable expenses, i.e. accommodations, travel and meals, incurred from the attendance at these meetings.

Section 5 – Consultation

The Advisory Panel, or members at the direction of the Panel, may seek input from such key stakeholders as it feels appropriate. In such circumstances, the Confidentiality provisions of Section 8 of this Terms of Reference continue to apply. Any public consultation beyond this must be first approved by the Minister.

The Provincial Government is responsible for undertaking consultation on the Advisory Panel recommendations. When the Panel's report is submitted to the government, and after evaluation, the report will be released for consultation (within 45 days of submission of the report). This would include a posting to the Environmental Bill of Rights registry and potentially other consultation activities.

Section 6 - Consensus On Recommendations

The Executive Group, on behalf of the entire Advisory Panel, will provide its recommendations to the Minister in the form of a written report that reflects a consensus of the Executive members. The report will clearly reflect those issues where a consensus could not be reached, but where a majority of the Executive favours a specific recommendation. Dissenting views may, at the option of the dissenter, be reflected in an appendix to the report.

The Executive Group will provide the Sector Group members with an opportunity to review their draft recommendations, and will then be invited to present their comments orally at a joint Sector Panel/Executive Group meeting. Following this meeting, recommendations may be revised to take this advice into account

Section 7 – Timeline

The Panel will provide regular updates on progress to the Minister. A formal "progress report" will be submitted to the Minister by the Executive Group by September 30, 2004. This report will set out the following:

1. opportunities for immediate environmental assessment improvements;
2. Preliminary recommendations on longer term environmental assessment improvements;
3. direction and guidance for Sector Tables; and
4. Primary areas of focus for additional Panel work and proposed timelines.

Sector Panels will hold workshops and meetings and report back to the Executive Group no later than October 31, 2004. The Executive Group will submit its final report to the Minister by December 31, 2004.

Section 8 – Confidentiality

The Advisory Panel, its members and former members shall treat as confidential any deliberations, votes, recommendations, draft or final report, whether recorded or not ("Confidential Information"). Throughout the term of the Panel and following that term, the Panel, its members and former members shall keep all Confidential Information secure and shall not use the information except as required in the work of the Panel during its term and shall not disclose the Confidential Information to any person except with the prior written consent of the Minister.

If an Advisory Panel member seeks input from stakeholders, (s)he shall advise the person(s) being contacted of the requirements set out in this Section 8 and shall take appropriate steps with regard to the contact with the key stakeholders to maintain the Panel's obligations set out in these paragraphs.

All information that is in the custody or control of the Crown is subject to the access provisions of the *Freedom of Information and Protection of Privacy Act.*

ENERGY SECTOR TABLE REPORT APPENDICES

APPENDIX I - ISSUES ARISING FROM CONSULTATION

There were several important issues that were raised during the Energy Panel's workshop and stakeholder consultations. Given the limited time available to consider the many issues, the Panel was not able to give these subjects the attention that they deserve. Therefore, the Panel would like to highlight three key issues worthy of further deliberation. They are briefly described below:

1.) Federal-Provincial Coordination

Depending upon the type of project, other permits and approvals may be required to construct and operate a facility following EA approval by a federal or provincial authority. A proponent may commence work to obtain other permits and approvals during the EA process. However, the project may generally not receive permits or approvals or commence construction until it has first fulfilled EA requirements.

Although coordination procedures have been established by the CEA Agency and the Ministry of the Environment to facilitate a single EA and review process for a proposed project involving both jurisdictions, there may still be considerable overlap in jurisdictional authority among different federal, provincial and municipal agencies.

2.) Cumulative effects

The Don Watershed Regeneration Council raised the issue of piecemeal environmental assessment projects and the difficulty of assessing the incremental and cumulative impacts of multiple projects, approved separately under Class EAs or individual EAs. They were particularly concerned about the cumulative effects on natural areas that are already degraded or deteriorating, and recommended a regular review of the cumulative impact of projects within key geographical areas, such as watersheds be undertaken by the province.

3.) First Nations participation and traditional indigenous knowledge

There is a need to consider how to involve First Nations more effectively in the environmental assessment process, and to improve the process by incorporating traditional knowledge into the evaluation of environmental impacts.

APPENDIX II– SELECTED APPROVALS REQUIRED FOR ENERGY PROJECTS IN ONTARIO

The following provides brief descriptions of some of the permits and approvals that may be required for energy projects in Ontario under the current rules.

Federal Legislation and the Canadian Environmental Assessment Act

A project that requires a federal permit or approval or uses federal land or federal funding may trigger the application of the *Canadian Environmental Assessment Act*. Examples of federal legislation that may apply to energy projects include the *Fisheries Act* and the *Navigable Waters Protection Act*, the *National Energy Board Act* (to cross pipelines regulated by the NEB) and the *Canadian Transportation Act* (for rail line crossings). Projects likely to affect Indian reserve lands including those requiring occupancy permits may require approval under the Indian Act. The federal and provincial governments have recently reached an agreement to facilitate a single EA and review process for a proposed project involving both jurisdictions.

The Ontario Environmental Assessment Act

The *Environmental Assessment Act* (EA Act) applies to electricity generation and associated transmission projects through Ontario Regulation 116/01, which assigns projects to Categories A (no EA Act Requirements), B (proceed through the Environmental Screening Process) and C (individual EA required – subject to Part II of the EA Act). Details may be found in the Regulation and Guide.

Transmission projects may also be subject to individual EA or the Class EA for Minor Transmission Facilities. Road access routes or improvements may be subject to the Ministry of Transportation or Municipal Class EAs. Some projects involving the disposition of Crown land and resources may be subject to the Class EA for MNR Resource Stewardship and Facility Development Projects.

Ontario Environmental Protection Act

The *Environmental Protection Act* (EPA) prohibits the discharge of contaminants into the natural environment that will or are likely to have an adverse effect. Any specified undertaking which involves discharging a contaminant into the air (including noise and vibration) or waste management/disposal will require a certificate of approval from the Ministry of the Environment under the EPA.

The EPA authorizes numerous regulations that impose emission monitoring and reporting requirements, set environmental standards and emission limits and prescribe conditions and processes for the issuance of Certificates of Approval for energy projects in Ontario, including:

- O Reg. 127/01 – Airborne contaminant discharge monitoring and reporting
- O. Reg. 337 – Ambient air quality criteria
- O. Reg. 346 – Air
- O. Reg. 347 – Waste management

In addition, a number of regulations have been made under the EPA with specific application to the electricity sector:

- O. Reg. 153/99 – Ontario Power Generation (sulphur dioxide and nitric oxide emission limits)
- O. Reg. 215/95 – Effluent monitoring and effluent limits for designated thermal and nuclear electric power generation facilities
- O. Reg. 396/01 – Lakeview Generating Station (sulphur dioxide and nitric oxide emission limits)
- O. Reg. 397 – Emission trading

Unless the project is subject to the EA Act (including the Environmental Screening Process) each stage of an application for approval under the EPA is required to be accompanied by public postings of documentation inviting comments on the project and the application through the Environmental Bill of Rights registry.

Ontario Water Resources Act

The *Ontario Water Resources Act* (OWRA) regulates the taking of water from ground or surface water sources as well as the treatment and disposal of sewage, and requires proponents to obtain approval from the Ministry of the Environment. Approval may consist of a certificate of approval and/or a permit-to-take-water, depending on the proposed undertaking.

Regulations pursuant to the OWRA regulate water takings and transfers (O. Reg. 285/99). Ministry of the Environment Regional Offices issue Permits to Take Water for once-through cooling or water diversion in excess of 50,000 litres per day.

Ontario Ministry of Natural Resources Approvals

The OMNR administers a number of acts that may require approvals for energy projects:

- Authorization to locate and construct dams under the *Lakes and Rivers Improvement Act*
- Deposition of Crown Land under the *Public Lands Act;*
- Approval for ownership/easement of land on which structures are built or reservoirs created under the *Public Lands Act.*

Conservation Authorities Act

Fill and construction permits in regulated fill and flood areas, and permits for alteration to waterways/shore lands are required under the *Conservation Authorities Act* and are issued by the local Conservation Authority.

Ontario Heritage Act

A Stage 1 archaeological assessment is required in accordance with the provisions of the *Ontario Heritage Act.*[3] The assessment must be carried out under an archaeological consulting licence issued by the Ontario Ministry of Culture. All work must comply with the technical guidelines for archaeological resource assessment (OMCTR, 1993). Based on the potential for archaeological finds, a Stage II archaeological assessment may be recommended generally involving site-specific test pitting or surface-survey.

If heritage resources are encountered during the Stage II archaeological assessment or construction, and their impact cannot be resolved by mitigation, a Permit to Excavate or Alter Archaeological and Historical Sites is required from the Ontario Ministry of Culture.

Ontario Ministry of Agriculture and Food

The Ontario Ministry of Agriculture and Food issues Permits to Construct, Improve and Maintain Drainage Works under the *Drainage Act.*

Provincial Highways Act

The Ontario Ministry of Transportation approves new structures or construction that may affect existing and planned highways under the *Provincial Highways Act.*

Occupational Health and Safety Act

The Ontario Ministry of Labour enforces compliance with industrial design and construction safety regulations, including filing requirements under the *Occupational Health and Safety Act.*

Energy projects and facilities must also comply with health regulations of the Ontario Ministry of Health under the *Public Health Act.*

Planning Act

The *Planning Act* regulates land use planning in the Province of Ontario and is administered by the Ministry of Municipal Affairs and Housing and municipal governments. Although Hydro One and Ontario Power Generation projects with EA approval are not subject to the Act, other energy projects may require *Planning Act* approvals such as an amendment to a municipal official plan, a change in zoning, a site plan approval, a consent to subdivide land and/or a minor variance to a zoning by-law. Site plan agreements can include commitments by the proponent to make improvements such as road widenings off site. The *Planning Act* generally requires some public consultation for these land use applications. Proponents should contact the local municipal government to enquire if any land use approvals are required for their proposed undertaking.

The Planning Act currently requires that municipalities, provincial ministries, the Ontario Municipal Board and other decision-makers "shall have regard" to the Provincial Policy Statement (PPS) when making decisions on planning matters. This means that decision-makers are obliged to consider specific policies when carrying out any planning responsibility. The PPS is currently under review, and changes under consideration include a requirement that decisions “shall be consistent with” rather than “have regard” to the PPS. “Be consistent with” is considered to be a more rigorous test.

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[3] An Archaeological Assessment is required on lands that hold archaeological potential in order to ascertain the presence or absence of archaeological resources. If these resources are present, the Archaeological Assessment will evaluate the significance of these resources and outline measures to mitigate the impact of development on these resources.

There are also requirements imposed by the provincial plans including the Niagara Escarpment Plan, the Oak Ridges Moraine Conservation Plan and the Parkway Belt West Plan that supplement or replace PPS and municipal planning policies in the areas to which these Plans apply. The provincial government is currently developing a Greenbelt Plan and a growth management plan that would, when approved, impose additional requirements in parts of the Golden Horseshoe.

Other Municipal Approvals

Other municipal approvals that may apply to energy projects include building permits, road access permits, and permits or restrictions under tree cutting, site alteration and noise control bylaws.

The Ontario Energy Board Act

The *Ontario Energy Board Act (OEB Act)* prohibits the construction of certain hydrocarbon and electricity transmission and distribution lines without prior Leave to Construct from the Ontario Energy Board (OEB). A form of easement agreement may also be required. The OEB follows distinctly different processes and considers different criteria when granting leaves for hydrocarbon and electricity projects. The Board's approval is not required for electricity generation facilities; however licences are required for electricity generators, retailers and wholesalers.

The legislation and regulations provide that, for the purposes of granting Leaves to construct, the considerations of the Board shall deal only with "the interests of consumers with respect to prices and the reliability and quality of electricity service".

Other Transmission Related Approvals

The Independent Market Operator has jurisdiction over connection assessments and approvals and registration of generators. An agreement with Hydro One is required for connection to the Hydro One grid.

APPENDIX III– MEMBERS OF THE ENERGY PANEL

Paul Norris
Mr. Norris is President of the Ontario Waterpower Association (OWA). The OWA was established to provide a collective voice for waterpower interests in the province. Together, the OWA's founding members represent more than 95% of the waterpower generating capacity in Ontario: Ontario Power Generation, Great Lakes Power, Algonquin Power, Beaver Power, Regional Power, Seine River Power, Orillia Power, Abitibi Consolidated, and Inco.

Adam White
Mr. White is Vice President of Public Affairs and External Relations with the Ontario Energy Association. The Ontario Energy Association represents businesses serving natural gas and electricity customers in Ontario. Members include natural gas and electricity transmitters and distributors, generators, marketers, retailers, appliance and equipment manufacturers, contractors and suppliers, and firms supplying legal and consulting services to the industry.

Prior to joining the OEA in 2003, Mr. White worked for Mirant Canada Energy Marketing and TransAlta Energy Corporation in Ontario's electricity industry. From 1994 to 1999, Mr. White worked in the Ontario Public Service, at the Ministries of Environment and Energy, and Energy, Science and Technology.

Steven Rowe
Mr. Rowe is an environmental planner, and Chair of the Cleaner Energy Table. His background in environmental assessment includes helping MOE to develop the electricity screening process under Regulation 163, and assisting with the implementation of the process for a wind farm proponent. Mr. Rowe is the President of the Ontario Society for Environmental Management.

Jack Gibbons
Mr. Gibbons is the Chair of the Ontario Clean Air Alliance and Director of Pollution Probe's Energy Programme. In the past, he has been a staff member at the Ontario Energy Board and a Toronto Hydro Commissioner.

Ann Joyner
Ms. Joyner is a planner and Partner with Dillon Consulting Limited and has worked on numerous environmental assessments for the electricity and other sectors. The firm is currently completing EAs for wind farms and transmission facilities as well as planning approvals for several district energy facilities. She has been a part-time professor at York University teaching planning and environmental assessment for fifteen years and contributes regularly to the environmental policy sub-committee for the Ontario Professional Planners Inst.

Cathy Spoel
Ms. Spoel is a part-time member of the Ontario Energy Board. She is a lawyer with more than 15 years of experience in administrative law, with a focus on land use planning, environmental, municipal and energy law.

APPENDIX IV - PARTICIPANT LIST FOR EA ENERGY WORKSHOP

November 8, 2004

Name	Affiliation
David Smith	County of Bruce
Liz Cussans	Vision Quest Windelectric
Bunli Yang	E4 Inc.
Marilyn Miller	Ontario Ministry of Culture
Heather Davidson	M.K. Ince and Assoc.
Mel Plewes	Don Watershed Regeneration Council
Theresa McClenaghan	Canadian Environmental Law Association
Margaret Yu	Ontario Power Generation
Sunil Kumar	MacViro Consultants Inc.
Beatrice Karclmarzyk	MacViro Consultants Inc.
Brad Nichols	Enbridge Ont. Energy Assoc.
Chris Williams	Macleod Dixon
Peter Prier	Stantec Consulting
Joyce McLean	Toronto Hydro Energy
Kristi Sebalj	McMillan Binch LLP
Lee Doran	Ont Assoc. for Impact Assessment
Jerry Fitchko	Stantec Consulting
Ciara DeJong	Golder Associates
Jim McGilton	Region of Durham
Brian McCormack	Hydro One
Steve Reader	TransCanada Energy Ltd.
Peter McGowan	

In addition, the Energy Panel received written submissions from:

Cara L. Clairman, Ontario Power Generation

David M. Smith, County of Bruce

Peter G. Prier, Stantec Consulting

Heather Davidson, M.K. Ince & Associates

Jerry Fitchko, Stantec Consulting

Theresa McClenaghan, Canadian Environmental Law Assocation

Mel Plewes, Don Watershed Regeneration Council

Appendix V - Notes of Energy Stakeholder Workshop

Location: Gallery Room, Ontario Heritage Centre
8 Adelaide Street East, Toronto, Ontario
Time: 9:30am – 2:30pm

List of Attachments

Agenda
Presentation on Purpose and Process for Advisory Panel
Terms of Reference: Advisory Panel on Improvements to Ontario's Environmental Assessment Process; and
Starting Assumptions, Principles and Questions

Introductions and Review of Agenda for Workshop

Chris Haussmann (Haussmann Consulting Inc.) welcomed participants, thanked them for their participation and introduced himself as facilitator for the workshop. He reviewed the agenda (Attachment 1) and introduced Steven Rowe, Chair of the Energy Table.

Purpose and Process of Advisory Panel

Steven Rowe provided a description of the overall process associated with the Minister's Advisory Panel to set the context of the discussion. The purpose of the Advisory Panel is to revitalize the Environmental Assessment (EA) program, rebalance EA decision-making and refocus the EA process (see Attachments 2 and 3). He acknowledged that timelines were tight but encouraged input at this meeting and informed that there will be future opportunity to comment.

Starting Assumptions, Principles and Questions - Plenary

Adam White described the assumptions and principles that guide the Energy Panel's work. The basic focus is to gain advice from the Energy Panel on how to expedite "good projects". He also outlined questions that were provided, not to limit the scope of the workshop discussion, but to help stimulate the discussion. More details are provided in Attachment 4.

The plenary session provided panel members the opportunity to provide feedback on the Assumptions, Principles and Questions, and provided their input on key areas for improvement for stakeholder priorities. The following is a summary of key discussion topics, comments and questions. Responses to some questions provided by members of the Energy Table and other participants are provided in italics:

Explain the EA process used for various projects (i.e., water power, transmission). Projects are dealt with according to thresholds by Ontario Electricity Projects Regulation (116/01). For projects under 2 MW, documentation is required; over 2 MW, a screening process is required. This varies according to the scale of the project and the technology used.

Does Regulation (116/01) act as a screening EA? Certain projects are exempt. For example, The Regulation does not deal with nuclear projects. There are also class EAs for small transmission processes. The Ontario government sets energy policy and targets, such as the RFP for 2500 MW of new generation, and greater reliance on nuclear energy, but Nuclear projects undergo a federal EA and are not subject to a provincial EA. They should be subject to provincial EA so that policy-making is not separated from the EA. Nuclear energy is a federal matter under the Nuclear Safety and Control Act and nuclear projects are licensed by the CNSC. There is an agreement between the province and federal government that co-ordinates EA review so that the standard of work for an EA is met and the same decision is made either way. It is not the same because the decision should be made at the supply end, which is in the province.

The regulatory requirements are high and inconsistent between projects. For example the Exhibition Place Wind Turbine had to do a provincial EA and also a federal EA that was triggered by the application for funding from the Windpower Fund. It took too long to get a decision (2.5 years). New technologies may have different types of impacts. Not all these technologies are subject to similar assessments; it is not a level playing field. There are requirements for small wind projects that may not be required for larger projects in other categories. No rationale is provided for requirements.

There is overlap within the province: the Environmental Assessment Act (EA Act), the Planning Act, and Ontario Energy Board (OEB) Section 92 for transmission lines. This needs to be streamlined. Where does municipal planning/zoning overlap EA planning?

There is a lack of consistency between different class EAs. There is no ability to examine present or future cumulative effects of all projects. Now, we only look at each project in isolation. Access to information difficult. There is no peer review or associated information available, and no ecological interactions are considered. Transboundary effects should be included. Not only do proponents not have access to information, they also do not understand other industries. There needs to be a more comprehensive approval process and a provincial body to make sure cumulative effects are addressed.

The Federal Commission on Environment and Sustainable Development 2004 report, chapter 4 on Strategic EA, considers plans, programs and policies to be subject to EA. This has been in effect for 14 years. The EA Act also allows for application to energy use plans and programs. But this has traditionally not been used. Experience has shown that it is very difficult to make strategic EAs effective.

The ecosystem approach for planning has not really been considered. People are part of the environment. There should be no segregation between natural and social aspects because they work together. More consideration is needed of the cultural landscape (e.g., the heritage building under the Exhibition Place Wind Turbine looks like a toy). This will help avoid conflict with the public. Visual effects assessments and cultural considerations are included in provincial EAs, but cultural landscapes should also be incorporated into municipal planning.

In the post-Ontario Hydro era, we do not have the ability to present a comprehensive, integrated plan.

Erring on the Side of Caution (Precautionary Principle) – Ensuring that there is no impact from a project to a degraded environment may not be the same as ensuring that there is no impact to an untouched environment. If we follow the Precautionary Principle too closely, then we would be unable to do many projects. The Precautionary Principle should be integrated with consideration of existing as well as forecast impacts.

Functional matters can be considered quantitatively but aesthetic matters (e.g., visual impact) are highly subjective.

Planners are not in the business of catering to majority opinion. We need to understand and convey that the government is going to go ahead with certain projects to supply the energy to meet the demand. There must be clearly defined goals explaining who the players are and when and where they get involved.

There needs to be a better degree of ownership in the Regulation (116/01) process from government and proponents.

There is a fundamental lack of public understanding of what the proponent is required to do about alternatives. Proponent requirements should be clarified to the public.

Proponents conduct their projects with a higher standard than is suggested by the Guideline because they know there will be Requests for Elevation. However, if the public (often even one group) does not support the program, it can delay the process, despite support from the public, agencies and regulators. There is no motivation for objectors to seek agreement on issues because they know they can wait for the opportunity for a Request for Elevation. The Guideline is too weak; this situation can be improved by having rules in the permitting process. This should include clearly defined timelines as the 30-day timeline for submitting a Request for Elevation is only recommended, not enforced. MOE is taking too long to rule on elevation requests. There is also an indeterminate period associated with requests for additional studies. Thus, there could be long periods (four to nine months) between submission of the EA study report and final approval. Currently there are only guidelines. MOE works with guidelines; the industry needs clear rules.

Sometimes, with certain disputes, the project must move forward and a decision must be made. Mediation is not possible when someone is opposed to the project in principle. There is an approvals process under the EA. If any person holds an opinion then it is considered legitimate. What if the person is right? If the Request for Elevation goes to the Minister, a guideline is needed for dealing with the softer social dimensions – these must not be ignored.

The process is proponent driven. It works until the 30-day review, when Requests for Elevation are submitted. Perhaps the process should be slowed down. This is a MOE administration issue.

Delays could be minimized by ensuring there is a mechanism for mediation between proponents and identified interveners before the EA report is posted to make sure vexatious and frivolous objections are dealt with. One problem is that the proponent recognizes that there are intransigent people and then proceeds without them. Then the only time they can become involved is after the EA study report is submitted. Involving these intransigent people earlier in a formal process should be considered.

But in cases where there is an objection that is not vexatious or frivolous, and there are legitimate reasons not to proceed, there should be some provincial responsibility to streamline and decide the process, and evaluate the merits of the case.

Also, if there are legitimate reasons and the public stakeholders are credible, then they should be involved before the EA study report is posted. The notification requirement is insufficient. The opponents should have a greater involvement earlier so that the process is less proponent driven. The proponent must follow the EA Act, and meet with people to try to resolve issues. The proponent does want to resolve the problems.

The process-driven nature of the EA process also provides little opportunity for opponents to be involved early in the process.

Attempts are often made to include opponents earlier, but there are always latecomers.

There should be a way of identifying opponents with a differing philosophical view before we start planning the project. This may be facilitated by disseminating information on the project proposal to the community/interested parties very early in the process. But it is difficult to identify interested parties because the groups often do not form until they start receiving information on the project and realize how it may affect them.

The permitting process leaves proponents open to extortion by communities for benefits and money to avoid objections and lengthy hearings. However, proponents also promote such benefits or incentives to communities. Proponents have to go beyond the Guideline to get approvals.

In areas that have been successful with respect to wind energy, the government has investigated where such projects would be welcomed and acceptable to the public. This should be applied to other energy categories, linking to Provincial Policy Statements and land use and resource management planning, and recognizing that the location of a fuel source may limit the location of a project.

A list where certain developments are welcome or prohibited (e.g. like ANSIs or ESAs) could be developed. Proponents could also go in advance of a project to try to find a willing host, although this may not always be easy.

Advanced notification to the community of preferred locations may divulge competitive or confidential information, leading to increased cost of land.

Break-out Session Comments and Recommendations

Participants were organized into three discussion groups to produce suggestions for improvements to Ontario's EA process for energy projects in the following key areas:

- Ontario Electricity Projects Regulation (116/01) and Guide;
- Project Screening (by category, class, technology or fuel type);
- Process Steps and Timelines;
- Elevation Requests;
- Transparency;
- Public Participation; and
- Monitoring and Reporting.

Recommendations and comments were reported back to the group. Participants were then given the opportunity to provide additional individual comments. Input received from all three groups and during the subsequent plenary is summarized by topic.

Ontario Electricity Projects Regulation (116/01) and Guide

- The Regulation or Guide is perceived as fundamentally good or practical. (four comments). The Class EA for transmission works well. Minor revisions are needed to make the Guide even easier to work with. More direction on requirements is needed at the screening level. It would be helpful if there were one requirement for each type of project, with no option for elevation. For the Class EAs or Panel Reviews, the public should submit a request for denial (not for elevation) after the EA report is submitted. Get written input from the public. Then, the director can make a decision.

- Change the Guide to a rule so that certainty is achieved (e.g., to describe what needs to be done, when, how?). Additional rules may be needed to make it more comprehensive. Certainty of process is required for the amount of work done.

- All the players, their roles and responsibilities need to be clearly defined. The Regulation is silent on 'alternatives to' and the Regulation or Guide needs to be more specific, so that proponents do not go beyond their mandate.

- Municipalities should be evaluating transmission.

- Do not expect a proponent of a transmission project to identify activities that it does not do:

- Explain what the proponent is expected to do. 'Spell out' what players should do, with respect to alternatives and alternatives to.

- This could be articulated in the Regulation or Guide.

- Hydro One is responsible for transmission but we need to have those responsible for generation deal with alternatives to this.

- Perhaps the Ontario Planning Act could deal with this and provide guidance.

- Consistency of Regulation (116/01) with other sectors? There is a big difference between energy, transportation and waste.

- Energy is usually private sector; therefore, 'alternatives to' won't decide, and need is economic. Therefore the process should not be the same.

- There is the question of how different sectors are depending on role of private sector in waste, and particularly the role of the provincial government or municipalities

- Is there a role for provincial policy to help drive this?

- Demand/supply plan was shut down because ultimately it comes down to the individual project.

- In Oak Ridges Morraine, EA was not required. The generation need is high (15,000 MW); the feeling is that if something is economically feasible then build it.

- Consideration of 'alternatives to' is not feasible for all proponents (e.g., waterpower proponents should not be expected to consider wind). There is also a problem of choice in electricity generation, since electricity all goes to the same system. So, local decision or involvement in a preference over generation facility is realistically restricted to the type of facility preferred.

Project Screening

- Thresholds – Consider revising the application of thresholds and their utility. For example, if output from an existing facility increased output from 199 MW to just over 200 MW, then an individual EA is needed. A threshold of 25% increase should apply regardless of whether or not the project is over 200 MW. If government wants to encourage energy efficiency projects a percentage increase approach is recommended, rather than megawatt increase.

- Develop a road map for all approvals and processes (provincial screening, Planning Act, and federal EA, etc.):

- Include an outline of how approvals can be merged or combined.

- Include a checklist. It would be very useful, particularly when addressing federal and provincial assessments.

- There is concern about the relationship between the OEB and EA Act. For example, with respect to underground or aerial transmission lines, a project could get underground approval under EA but the OEB could say that it is not appropriate because of the increased cost.

- Role of the Ministry of Natural Resources (MNR) with respect to Regulation (116/01), particularly on crown land as MNR requires its own Class EA under resource stewardship, needs review and revision.

- This dual approach defeats the purpose of having thresholds.

- There are two ministries requiring two types of approval.

- Similar with Ontario Reality Corporation Class EA – Granting of easements for transmission lines or pipelines is already covered by Regulation (116/01) or the OEB EA.

- Not all agree with MNR argument, because MNR still requires an assessment for the Disposition of Crown Land

- Applicability of thresholds on public and private lands is not clear.

- There is a need for hierarchy and use of the strictest EA for streamlining.

- The large number of requirements, processes, etc. cause confusion for ENGOs trying to understand how to participate. Inconsistency among various EAs adds complexity/confusion for proponents and other stakeholders.

- There should be a mechanism for considering when new energy technologies should be exempt from EA. All technologies should be subject to the EA but with designation varying by type of proponent.

Elevation Requests

- Two comments were provided on the need to improve timing around Requests for Elevation:
- Allowing two opportunities for elevation requests is time consuming, delaying the process. Two are required: the first deals with scientific investigations while the second is political. Timing has to be improved, perhaps by having both requests concurrently or bringing public in earlier.
- Without clarity on timelines for completion, the proponent is left in limbo waiting to find out when it will be complete. Provide a schedule for completion.
- Schedules are spelled out fairly well, but uncertainty starts when referred to mediation or further study.
- Request for Elevation issues are a major concern. MOE requirements vary across the province. Some certainty in the process is required.
- Requests for Elevation are frustrating, because they are a way to delay or get compensation for other issues not related to the project.
- Requests for Elevation should be eliminated because the spectre creates an enormous amount of uncertainty.
- Have consolidated hearings as an alternative to elevation status.

Transparency

- Increase transparency by providing information so that people know commitments made by proponents are kept.
- Bring back the provincial review process (multi-ministry review); apply it to energy only.
- Post follow-up measures on a registry like the federal EA process.

Process Steps and Timelines

- There needs to be a quick process for approvals for projects that do not have any objections. Do they have to go through lengthy process? Just concentrate on specific issues for each fuel type that involve the public. This will help us know which projects should be fast tracked.
- Do an overall strategic EA where MOE assesses needs and alternatives province-wide, and the projects drop in as they meet the MOE criteria.
- Use consolidated hearings to integrate the planning process and EA process.
- Timelines need to be clarified or fixed (e.g., or Ministry review, or overall EA process). They do not necessarily need to be faster, but it is important to know when we are going to get an answer, so that follow-up activities can be planned. (two comments)
- There is no map of cultural heritage resources. The onus must be on the proponent to identify these resources. Cultural information should be extracted from reports already done.
- Overlap of federal-provincial and intra-provincial jurisdictions of projects is frustrating to proponents. More certainty is needed on how to manage these overlaps.
- It is important to have beginning and end to the EA process.

- Decide that a certain type of EA is required for a certain type of project.
- I am happy with the OEB EA process and monitoring. The Terms of Reference are very clear.

Public Participation

- Role of mediation needs to be clarified. Mediation exists in theory but it is rarely used because the parties are reluctant to be the first to go through it. Success depends on whether there is a willing group to negotiate with.
- The public should be involved early. Provide funding for this. This also helps keep the proponent honest and perceived to be honest, and allows people opportunity to get advice geared to their issues. Also, include public participation in the design of the project (i.e., how the project will go forward) at the beginning so that early public buy in is received. The EA is more a social and political planning exercise than a technical one.
- Requests for Elevation are provided because people want to know that a third party has heard their concerns. Provide a forum (e.g., a registry) where the public feels like their issues have been heard and validated. This also links to transparency.
- There need to be additional criteria for public participation. (two comments) There should be public participation but there are too many last minute or frivolous and vexatious intervenors raising problems. The onus should be on the public to openly declare their issues and to participate, so that the proponent can deal with issues. There needs to be well-defined criteria for Requests for Elevation or evaluation. However, there may be too many scenarios to generalize. Increase the 30 day review period to 60 days to help resolve opposition and improve public consultation. There are some cases where Citizen Liaison Committees are problematic:
- Need for clear willingness for the project to take place
- Provincial mandate to either participate or not
- Worked in other cases with rate payers, other committees, but problem with payment – how to articulate costs
- Nature of project is critical – need for willing partner
- Consider using a CLC as a criterion for approval.
- There has to be strong leadership if groups come up at end, trying to halt project for no grounds. We need to be able to show and identify clear documentation of how the proponent has tried.
- Put onus on MOE to make the Environmental Bill of Rights (EBR) a better tool and promote the EBR as a tool to disseminate information about projects. Provide a free description service to inform citizens about EAs is taking place in a geographic region (e.g., the Public Registry used by the federal government).
- Create a better roadmap on how to involve First Nations. The federal government does a good job of outlining this (e.g., partnerships with First Nations on projects, revenue sharing). There has been good experience but expect increased time and expenditure when starting a consultation or partnership. Refer to Redhill Creek (which includes evaluation of archeological findings with First Nations) as a potential standard approach that would entail the presence of FN through all studies.
- Strategic EA – the province should develop an Energy Policy EA with public review.

Monitoring and Reporting

- One measure of success is that the public feels like their concerns have been heard and issues validated.
- Data Sharing Needed – It is hard to discern source or derivation of data review reports, monitoring sites, models used, etc. Data seems to be private and proprietary.
- Province as Custodian of Planning and Resource Data – the province should act as data custodian and evaluating the quality of data and analysis. This could provide a database of potential crossover between different projects but might also suggest the need for standard data gathering and compilation protocols.
- Data Organization – There is a poor quality of record keeping within the MOE and access to and indexing of data. Proponents also cannot find examples of good EAs.
- Administrative Monitoring and Compliance – There needs to be identification of conditions of approval, what worked and what did not, and feedback for the next EA.

Conclusion and Next Steps

Adam White thanked participants for their input, and welcomed additional written comments by November 12, 2004. MOE has to submit its report to the Executive by November19, 2004. They will meet with the Executive on December 6, 2004 and will report back to the Minister of the Environment by December 12, 2004, after which a report will be produced. He invited participants to stay engaged with the review process.

Appendix III – Workshop notes

Transportation Workshop

Wednesday, November 10, 2004

Ontario Heritage Centre
8 Adelaide St. East, Toronto
10:00 a.m. – 2:30 p.m.

SUMMARY NOTES

1.0 Introduction of those present

2.0 Overview of Process by Rod Northey, Executive Committee Member

3.0 Overview of Transit and Transportation Table Recommendations by Leo DeLoyde and David Leckie

4.0 Plenary discussion to focus on key issues and identify break out groups

Group Comments in First Plenary Session:

- Recognize that 5 Class EA is a very fundamental change - changing it from disapproval process to an approval process - federal process means you cannot go ahead until you get an approval - failure to disapprove
- 5 Class system is really a readjustment of categories, not a change of process
- we need more positive direction from Ministry - we would like more certainty so that if we are caught up in an objection, we would like to know if we are following process correctly
- EA should be do no harm eg. London speeding cars everywhere – it sounds fantastic but everywhere you see harm – billions of dollars to serve single occupancy vehicles but it would take a massive change to turn it around on a political level
- Discuss MEA class EA, process itself is way it's undertaken by process – does the process need to be changed or the way it's used – Class 5 – what is the process for elevating it? 10 class EAs – do they have to be modified? Large municipalities and small municipalities using class EA – MOE needs to help the smaller municipalities
- Transportation master plan approvals – 2 concerns – is there any thought that they would deal with larger environmental impacts like global warming and looking at transportation mixes or looking for transportation corridor fixed in times so you don't have to look at environmental impacts later?
- Both of those – need to plan in advance and bottom line is you will need growth, and idea is to have as few roads as possible – goal to improve other forms of transportation in master plans and reduce roads
- Class EA and what goes into classes – two class EAs have been bumped up – did panel look at type of requests? – some in classes shouldn't have been there in first place – hard to go back to beginning because didn't deal with individual EAs in beginning – some things should go up into higher class
- Master plans should look at demand management and want to give it more status – individual roads difficult to look at on local basis
- Assumption as people buy more cars, there will be more roads – there will always be a need for more roads – we already have capacity but need to do it smartly – maybe 5 year moratorium on building more roads
- Too much emphasis on training opponents, should be more training of public

- Language is faulty – always talk about improvements as if someone who's against a project is against improvements – Class 1, 2 and 3 make no impact on their own but cumulative effects are greater than Bs and Cs
- How do you bring sustainability into process? Have better planning, recommendation on master planning should take into account full array of transportation strategies eg. Cycling, walking – looking at environmental impact or environmental benefit – move from mitigation to benefit
- Did you do anything that questions implicit assumptions?
- Not making judgement about what's good or bad but try to allow for changing the process to allow for decisions that have to be made
- There is a disconnect – master plan with transit that uses road system, and giving benefit to green doesn't appear in classes because it's a benefit - given priority in class eg. HOV lanes or bus lanes – 4 lane highway to 6 – if 2 lanes are for transit is that different than just adding 2 lanes of traffic? how is priority for environmental planning incorporated?
- Things that are more green could be put in a category to allow it to go through more quickly
- Highway is launching major 400 series – these highways have transit ways as carrot but the transitway is likely to be implemented last – have you thought about how approvals to that should be considered? Would transitway be able to be approved under this?
- Wouldn't there be a chance to hive off transitway? No
- Feedback from public but then the public doesn't see how input is considered– Environmental Commissioner is to implement appropriate process and having EAAC outside is flaw
- Recommendation on scope – how do recommendations fit into that culture?
- Framework is supportive of scoping but what's contentious is what's in and out
- A couple of things should be explicit eg. what does a bumpup mean after all technical work is done – because of streamlining time is spent on public participation– there are times go to public in class 2, over 200 meetings on official plan, buses are crowded and stuck in traffic, give them their own lanes, not allowed to tell you our plan because we're in phase 2– individual EA on transit project is not time well spent to go to public and get comments on TOR – want to know more details in that meeting – public feel time's wasted – streamlining time-consuming TOR discussion –
- Practices – guidelines would be very important – look at how we define problem, maybe too narrow, problem not enough roadway capacity – maybe problem needs to be defined more broadly in community which leads to different examination of alternatives – problem of meaningful consultation – how to be more proactive using processes – still have public meetings and don't have good connection as to what comes out of meetings – urge Panel to remember the process applies all across Ontario – 67 transit systems in Ontario where there are buses on roads – big economic needs means intermodal
- 10 sectoral EAs – how do you deal with sewer and water, lots of road work is driven by sewer and water?

5.0 Break out sessions and conclusions:

Group 1 Report – John Kelly

Topic 3: Development of an improved process to manage Part II Order Requests

- recommendations have to do with clarity and consistency
- proponents often paid, but not public
- bump up allows appeal process
- if stakeholders are brought in early, there are fewer bump up needs
- time frames should be set and should be reasonable
- timelines could depend on the original Class of project or the complexity of the process
- problems – number, time for each
- MOE should have criteria to assess validity of request and these criteria should be clear and transparent so everyone is aware of them
- needs to be some flexibility in language but explanation should be clear
- bump ups for class 1 and 2? if they are local, maybe not necessary
- Part II linked to "provincial interest"
- look to Planning/OMB for frivolous/vexatious language

- followed process correctly vs. merits/flaws of proposal
- prescription good especially for timelines – need some flexibility for criteria eg. "any other matter of provincial interest" kind of clause
- fees maybe not necessary if criteria clear – however may be applied if frivolous, refunded if not

Topic 4: EA Scoping and Consideration of Alternatives

- #1 – role for some scoping but should be clear rationale/justification subject to independent review
- has to be subject to an independent review/formal hearing by some body other than proponents
- scoping should depend on project, class and complexity of issue, not type of project
- should have justification/rationale in TOR consistent with EAA
- #2 – should have clear guidelines from MOE related to format or contents of scoping justification – something people can refer to
- #3 – should be some surety that public consultation has been considered and appropriately valued for scoping decision
- often public do not have confidence that they've been listened to
- difficult to get input without some clarity

Topic 7: Public Consultation and ADR

- #1 - at the beginning of any process public notice should go out (i.e. newspaper/website) so that individuals can request more information if desired and public who would like to be involved are in at the beginning
- #2 – should share with public consultees – agencies/stakeholders
- everyone involved should be aware of all others who are being consulted so everything is clear and above board

Key Points:
- #1 – Timeframes should be prescribed and depend on original class/complexity of project
- #2 – MOE should have clear transparent criteria to assess the validity of application related to "provincial interest"
- #3 – Fee may be a good idea to discourage vexatious/frivolous requests, but should only be applied if deemed frivolous or at least refundable if found not to be frivolous

Group 2 Report – Mike Wolczyk

Topic 2: *Integration of Planning and EA Act

- strongly supported it in principle
- transportation master plans need to be integrated into planning
- there are tools required for the integration such as provincial policy statements*, leadership
- integrating public consultation processes
- at all levels, transportation master plans must be integrated with land use plans
- how will Places to Grow Growth Management plan be integrated with Planning Act and EA Act?
- a new tool is needed for long term protection of transportation corridors (if the lands are not protected as they are for schools and hospitals, the lands will already be developed by the time municipality wants to create transportation)

Topic 5: Categorization of Projects

- agree with categorization but want it broadened so it is based on environmental benefits and impacts
- the caveat is that you need a provision for regular review and approval of categories
- class EAs had an expiry date of 5 years so perhaps a 7 to 10 year time frame might be good for review
- how would objectives/criteria to define categories be identified? environmental impacts could be used as a basis
- streamlining processes for projects identified as priorities such as transit

Topic 7: Public Participation

- need for collaborative stakeholder consultation processes rather than just public information sessions
- public participation shouldn't be prescriptive but there should be guidelines from MOE that describe a "best practices" approach (eg. TTC)
- there's a need for public education about the process and MOE should lead this through a variety of mechanisms (eg. website) so people can be actively involved at an earlier stage
- 30 day comment periods do not foster good involvement and are difficult to deal with if people haven't been involved in the process
- ADR should be independent of MOE
- Review of document submission and review timeframes

Group 3 Report – Graham Vincent

Topic 1: Inclusion of Transit Projects in the Municipal Class Environmental Assessment

- no doubt that this is needed
- there are glaring problems in legislation where roads are given exemptions that are not given to transit
- need a proper class EA process that incorporates transit
- #1 - *first recommendation is that the MEA be amended so that municipal vehicles (buses, streetcars) in municipal streets can be included immediately
- includes ancillary facilities such as bus looping and stations, etc.
- something more comprehensive is needed for the longer term
- #2 - *possible recommendation that transit projects be included as a new chapter in the MEA class document
- *collective proponents need to meet with MEA to discuss process for transit projects in Class EA process as per #2
- MOE needs to emphasize that Class EA is a legitimate process

Topic 6: MOE's role in training

- MEA trained 470 people this year
- MEA's webpage, course is available to public
- #1 - *MOE should provide more resources to MEA to undertake training
- #2 - * there's a need for clarity around responsibility for who's doing what with various provincial ministries/branches and federal government and strict adherence to guidelines
- #3 - *accreditation process is not required
- #4 – MOE/MEA share best practices and make them available to the public

Topic 7: Public Consultation and ADR

- communication during review process for Part II order
- need to agree on problem
- now there is no ADR process but ADR process might be helpful if it streamlines process
- *proscriptive public consultation process not desirable because of various unique projects
- *the current wording of the Municipal Act regarding municipal determination of notice be extended to the EA Act
- MOE should not assign staff to ADR but should recommend when a mediator should come in

6.0 Extra Ending Comments:

- Issue of coordination with federal act hasn't been addressed
5 classes of project – Class 1 and Class 2 still have to answer to CEA
MEA working with CEA to streamline the streamlining

Note to Executive Panel to consider TOR:
TOR – Minister's decision is final
So problem is you get all the way to end of process, and you can't question it because the decison was made in the TOR
Need appeal to TOR
Scoping is appropriate if there is clear rationale
It's better to go back to EA proposal instead of TOR
Nothing to stop decision on TOR from being approved

Appendix III – List of Participants

Participation List for EA Panel Transportation Workshop November 10th, 2004

Name	Affiliation
Beverley Thorpe	Thorpe Assoc.
Linda Gasser	407 Action Group
Martin Collier	Ontario Smart Growth Network
Mike Bricks	O.P.P.I
Milena Avramovic	AMO
Paul May	York Region Transportation and Works Dept.
Angela Iannuzziello	Toronto Board of Trade
Shannon Collins-Williams	Toronto Board of Trade
Jeff Seaton	Municipal Engineers Assoc.
Bradley Shaw	Coalition of the Niagara Escarpment
Leslie Scott	McCormick Rankin Corp.
Uwe Mader	City of Toronto, Works & Emergency Services
Gary Carr	Toronto Transit Comm.
Joan Doiron	Better Transportation Coalition of Toronto
Pat Boeckner	Transportation Planning Ministry of Transportation

Appendix IV – Submissions to the Transportation Panel Members from Workshop Participants

November 12, 2004.

Blair Rohaly, Project Manager
Minister's Advisory Panel on Environmental Assessment
in Ontario
Strategic Policy Branch
135 St. Clair Ave. West, 11th Floor
Toronto, Ont. M4V 1P5

Dear Mr. Rohaly:

First, I wish to begin by thanking the Transportation Table for inviting members of the public to attend the workshop on November 10th.

I am in support of the "Statement of Challenge" the Panel Executive has developed. It is important that the panel's work go beyond simply expediting/streamlining the EA process

Most of my EA experience has been with individual transportation EAs, and my comments reflect that.

Consultation

If EA approvals are to result in projects "for the betterment of the people of Ontario", then approaches to stakeholder consultation must change dramatically. At the most basic level – consultation should be a two-stage process. 1.) Proponents must inform the stakeholders about the proposed project, **and** the relevant EA process – i.e. stakeholder education. 2.) Once understanding what is at issue and how the various stages of the EA study will unfold, stakeholders can then prepare to provide input focused, at any particular phase(s) of the EA that is of interest/concern to them.

There is very little guidance on consultation in MoE's draft "Guide for Preparing Terms of Reference for Env. Assessments" Dec.15/2000 – it is basically left to the proponent to address as they see fit. MoE evaluate **if** the proponent consulted, but do not if the consultation was effective, or commensurate with the complexity of the project/magnitude of impacts.

To some degree the number of predetermined consultations outlined by proponents rely on unrealistic EA Study schedules put out by proponents themselves that are rarely, if ever met. E.g. if the EA study is to take two years, the proponent proposes 4 rounds of stakeholder consultation. Unrealistic EA study schedules put undue pressure on proponents and stakeholders, and usually subject the entire project to undue political interference as it is then viewed as being "behind schedule", and often resulting in public cynicism about fairness of the process, and comprehensiveness of assessment.

From my experience, stakeholder consultation is the component of EA studies to which proponents, including government proponents, devote the least time and fewest resources. It tends to be viewed as a hurdle– a requirement of the EA that must be met.

Government proponents often neglect to do something as simple as post the EA study commencement notice on their ministry website, or post ToR summaries on their websites as is required in the MoE "Guide to Preparing Terms of Reference for EAs".-draft-Dec. 15.2000 –Pg. 19.

EA Project budgets rarely allow for adequate stakeholder consultation. To bid competitively on projects, consultants are often forced to shelve innovative and effective communications/consultation strategies because they are more expensive, and are forced to adjust their bids and activities to the proponent's predetermined consultation preferences.

Projects typically affect a minority in any community. The majority, who do not feel they would be directly impacted, are often in support of a project without understanding, or having the opportunity to understand, the magnitude of impacts on others. Formal interactive/participatory multi-stakeholder consultation opportunities are crucial to allowing impacted communities to learn about and come to terms with the huge differences on issues that could otherwise divide communities.

Such consultation opportunities may allow for a consensus to emerge on some issues, as well as an acceptance/understanding of different points of view – the issues are not just technical, but also philosophical. Especially for large linear transportation corridors that cross a number of municipal boundaries and where projects impact communities in different ways, this understanding is critical to the overall identification and acceptance of trade-offs that are the essence of an EA.

Proponents often encourage "one-on-one" meetings, or meetings with individual groups, but generally avoid collaborative, multiple stakeholder sessions. I believe that proponents feel that empowering stakeholders might result in a more onerous study for them.

Proponents have historically been unwilling to engage in consultation formats where individuals/groups in a community get to hear what others have to say –i.e. hearing the "other side" of an issue. This isolation of stakeholders and trying to keep a lid on any opposition to a project is destructive to communities and may not result in a comprehensive assessment of the issues during the EA.

Few proponents appear capable or willing to deal with what they view as the "softer" issues, i.e. social and cultural environment. There is a consistent failure to produce reliable, independent data about the purported economic benefits/costs of a project.

Often, proponents appear to prejudge what constitutes a valid concern/comment and fail to consider that objectives/priorities of stakeholders are likely to be very different in some key areas than those of the proponent.

Entire categories of concern to the general public e.g.. human health risks are rejected outright because proponents are unwilling and/or unable to address such issues though there is a well documented burden of illness associated with things like bad air quality, as an example. There is no provincial agency with a broad health mandate that tends to be involved in EAs, therefore there is no government review of such matters either during the EA. Health Canada, if they are invited as an expert authority once CEAA is triggered, generally becomes involved after the preferred alternative has been identified.

Consultation activities must be informative, in a format relevant to a variety of stakeholder groups and task appropriate. E.g. for individual EAs, when reviewing complex issues such as "Need/Justification" and/or Alternatives To an Undertaking, the consultation format must contain a public education component, should be interactive where possible – e.g. facilitated workshops, presentations followed by Question and Answer session, etc..

Some consultation activities should be directed at a broad audience – e.g. project updates, major EA process changes, while others of a more complex/detailed nature may be of interest to a limited number of stakeholders e.g. those with related expertise, community groups/ngos with related mandates, etc.

Consultation meetings must be held at times of day/year when most stakeholders would generally be around, i.e. not in summer months or around winter holidays, or March break. Sufficient notice must given-so that as many interested people as possible could attend – e.g. between 15 – 30 days, and published more than once in newspapers.

My recommendations:

1. MoE **must** devise a set of **general** guidelines to assist proponents around stakeholder consultation strategies, but these should not be prescriptive. Consultation –format/frequency should be commensurate to the complexity of the proposed project, and the potential for adverse environmental effects. As stakeholders identify issues requiring further consultation, the proponent must respond to these with a task appropriate format.

2. MoE **must** require proponents to submit **Stakeholder Consultation Plans** showing how they plan to consult during the EA, **prior** to filing notices of EA study commencement. For individual EAs, Consultation Plans should set out how proponent intends to engage stakeholders during ToR phase, and proponent must demonstrate the plans flexible enough to respond to requests for a variety of consultation formats. The ToR itself must set out how the proponent intends to conduct stakeholder consultation in the EA study itself – it would then be subject to stakeholder and agency review.

3. MoE **must** require proponents to develop a **Communications Strategy** that would set out how they intend to communicate with stakeholders throughout the EA study around issues such as EA Study Schedule changes, consultation opportunities, major events affecting project/EA process, etc.

4. In a guideline document, MoE should recommend that proponents consider forming formal EA advisory groups/committees. E.g. **Regulatory Adv. Groups** –all agencies –fed/prov./Cons. Authorities with any interest in EA – principle – in until out; **Municipal Advisory Groups**-representatives from all directly or indirectly impacted municipalities; **Community Advisory Group** –to include broad representation from across impacted area. Some reps selected by local/regional councils, others selected by community organizations, etc..

5. All advisory meetings should be open to the public – the public has a right to know what public agencies are recommending. Advisory Groups should meet jointly at certain intervals to exchange information.

Intervener Funding

The extremely technical/detailed nature of EA documents is such that public involvement is seriously constrained by limited time and expertise.

Intervener funding must be available to community groups/individuals involved in an EA so they are able to participate effectively throughout the study, and to ensure that concerns are properly articulated and recognized.

This is all the more important as municipal staff operate in politicized environments and engage is less than rigourous reviews, and as government reviewers seem less able to provide the expert detailed technical review because of limited resources.

Recommendation:

1. That intervener funding be provided to ngos/community groups/individuals during the EA so as to enable meaningful participation and input.

Harmonization of CEAA/OEAA

Draft agreements to assist with harmonization have been developed by some proponents, but the two acts appear so different as to make harmonization during some key EA phases almost impossible.

Federal agencies do not get formally involved until there is a trigger. A "project" must be identified, federal responsible authority selected, which agency then identifies the various expert authorities. This will generally happen once the preferred alternative is selected under OEAA. The result is that federal agencies are likely to participate at a very limited level- if at all -during key phases of the EA such as development of the ToR.

Issues like Climate Change, Kyoto Protocol and other overarching federal objectives will never get on the EA agenda if not early in the process, particularly when identifying objectives for "Need" and "Alternatives To" phases.

I am not confident that all federal agencies fully understand existing opportunities for involvement prior to the identification of a preferred alternative under OEAA.

There appears to be no provincial agency with a mandate similar to Health Canada. This means that entire categories of concern – e.g. Human Health Risks/Impacts are at best only partially addressed through an EA.

Recommendation:

1. That MoE develop, jointly with CEAA, protocols/guidelines that clearly set out opportunities for federal involvement prior to CEAA being formally triggered, for projects where both OEAA and CEAA approvals/decisions are required.

2. That MoE require proponents to establish Regulatory Agency Advisory groups. All agencies/ministries with a relevant mandate must be identified at the start of an EA, and be invited to participate even before formal federal trigger. Principle – in until out. MoE and the Proponent must educate federal agencies/ministries about opportunities to participate before and after a project is triggered under CEAA.

Demonstrating "Need"

"Needs Assessments" are sometimes conducted by proponents prior to formal commencement of the EA Study. They tend to be in-house exercises justifying why an EA is needed.

For many transportation projects, need is simply accepted because certain projects have been "on the books" for decades, though they have not been identified as a result of rigourous public/multi-stakeholder planning process.

Where Min. of Transportation is the proponent, demonstrating Need is pretty much limited to showing that, if they build a new highway, they could fill it with cars/trucks and provide a particular level of service for selected horizon years, and that it would relieve congestion on the existing road network, while completely ignoring induced travel. Virtually no detailed assessment is provided for other non-road modes-those are viewed as being outside their jurisdiction.

For some projects, the "needs/justification component is included in a scoped ToR.

There is no guidance in OEAA around how proponents should demonstrate need/justification for a project.

Need is not an absolute concept, rather it is relative and contemplates important trade-offs that are rarely identified by proponents. Objectives that would guide the process around assessing "need/justification" must be developed with stakeholders at the beginning of the EA process. It is the precursor discussion to identifying reasonable alternatives to the undertaking.

Recommendation:

1. Proponents must commit to public consultation/stakeholder workshops very early in the process – prior to the development of the ToR –to identify with all stakeholders the objectives that should guide the "Needs/Justification" studies that are conducted in the EA study itself, or included in a scoped ToR if that is appropriate.

Alternatives to the Undertaking

As with Need, there is no guidance in OEAA in identifying **reasonable** Alternatives to the Undertaking. It is entirely predictable that proponents will want to ensure that their project emerges as the preferred alternative.

Most Alts To that are identified by the proponent in the ToR have not contemplated stakeholder objectives, rather reflect the objectives of the proponent, and are evaluated in a subjective manner with the proponents objectives/criteria dominating the process.

Recommendation:

1. Proponents must provide interactive consultation opportunities very early in EA study– prior/during draft ToR development, with the aim of identifying stakeholder objectives/factors/criteria that would guide identification of reasonable alternatives to an undertaking, and inform the assessment and evaluation activities to be undertaken in the EA study itself, or in a scoped ToR where appropriate.

Minister's Decision on ToR

As I understand it, a judicial review would only set aside the Minister's decision to approve a ToR if it could be proven that a Minister acted in a manner that is patently unreasonable. That would seem very difficult to prove. The two court decisions around Sutcliffe/Richmond Landfill ToR indicate this is very much subject to interpretation.

Scoped ToRs contain detailed information/justification about Need and Alts To. The "generic" unscoped ToRs that are now being produced in response to the Sutcliffe/Richmond Landfill decisions are so general it is difficult to get firm commitments included.

As things stand, a deficient ToR could be approved, with a subsequent EA carried out in accordance with that ToR that is known to be deficient in key respects. Though deficient, the EA may still be approved because a key condition for approval is that it be consistent with the ToR..

Recommendation:

1. Stakeholder must have the right to refer the ToR decision to a hearing/tribunal. This is in the public interest **and** in the proponent's best interest in that issues could be identified/addressed **early** in the EA study, rather than at the end. The result would be a more fair and more efficient process, one that is more likely to result in EAs that address issues in the most appropriate manner – thus being more consistent with the purpose of the OEAA.

EA Documents -Public Review Deadlines

Some proponents permit a 90-day review of pre-submission draft ToR documents, or EA studies.

Because the proponents' published EA schedules are rarely met, stakeholders rarely know in advance when key final versions documents are to be released/submitted to MoE by the proponent.

Most municipal staff are unable to get staff reports on Council agendas in time to submit these within the 30-day deadlines associated with public review of ToRs. What often happens is that there is little notification to the public in that these reports are only available at the last minute prior to council decisions. Staff must be able to engage council in meaningful decisions throughout the EA, and the public needs access to the information and to make their views known to their local/regional council decision-makers.

Agencies, with limited resources often have difficulty responding at the level of detail that is expected of government reviewers.

The public, with limited resources and time, is virtually shut out of these review processes as the EA documents are so overwhelming -complexity and sheer number/volume -that most give up.

Recommendation:

1. At least 60 days must be allowed for final ToR review and comment.

2. There must be at least one stakeholder consultation between draft and final versions of EA documents to let the public know the key issues/concerns identified in response to the draft documents. Ultimately, stakeholders are responsible for doing their due diligence, however, this could greatly help focus stakeholder scrutiny and input to final documents.

3. If the ToR is approved, there must be a stakeholder consultation at which any conditions of approval/changes to the ToR are explained to stakeholders, with a complete approved ToR document available to all stakeholders/posted on project/ministry websites.

4. At least 120 days must be allowed to review and comment on final EA Studies.

ToR and EA Approvals

It can often be decades from the time an EA is approved, to when a transportation solution is actually implemented.

ToR approvals should be valid for a fixed period of time, with EA studies initiated within that time period. Stakeholders/agencies cannot be expected to remain prepared for EA involvement indefinitely.

EA approvals for individual EAs must be limited, with a public process to review the EA study required to ensure that conclusions/approvals remain relevant to the current policy context/state of the environment, etc.

There needs to be some mechanism to tie EA approval to implementation. There are huge land use and property impacts when designating transportation corridors, and then implementing no transportation solution for decades. Municipalities often defer local/regional transportation investments hoping that an upper tier solution will be delivered.

Proponents now propose "combined solutions/alternatives" which involved multiple jurisdictions. The challenges of funding and delivering multiple components of and EA approved solution are staggering.

There must be some cut off for EA approvals beyond 15 years. I'm not certain how this should be approached, nor am I certain if EAs are a good tool for long-term transportation corridor protection. Something between the draconian 2003 Bill 25, and EAs may be needed.

Recommendation:

1. An EA Study must be initiated within a year of ToR approval.

2. When requesting EA approval, proponents must provide a "Project Implementation Plan" –including funding details. The likelihood of a solution actually being implemented should be subject to stakeholder scrutiny.

3. Individual EA approvals must be formally reviewed, via a public process, after 5 years and be completed within 18 months. The review results must be approved by MoE and made public.

Incorporating Transit into the Class EA System

I am generally supportive of transit projects being assessed via a "level playing field" Class EA process, as contained in the preliminary recommendations provided Nov. 10th.

However, several major 400 series highway projects come bundled with transit-way components, or are a mix of "combined solutions", i.e. existing road widening, local transit, HOV lanes, new corridors etc.

There need to be clear guidelines that distinguish between bona-fide transit projects that have been identified as public priorities, which should be subject to a Class EA, from those that have a transit component, but would most appropriately be considered within the context of a full individual EA because these include major new transportation corridors.

Transportation Master Plans

Most members of the public have no idea when TMPs are being developed/reviewed/approved, that these meet certain Class EA requirements for consultation on specific projects contained therein.

The manner in which TMPs are actually implemented, often results in substantial changes to TMP stated implementation priorities and/or projects. Local/regional councils work on current plus 4-year forecasts – political priorities and resources change constantly.

When TMP recommendations/projects make their way into Official Plans via OPAs, the public is rarely aware of these opportunities, and the implications.

The panel should not recommend changes that would reduce future consultation opportunities, based on the assumption that these opportunities occurred during TMP and secondary planning exercises.

If there is no time limit associated with Class EA approvals, there should be some appropriate limit and/or periodic review – please see my earlier comments re individual EA approvals.

Thank you for considering my comments. I would appreciate being advised when the Panel's recommendations to the Minister of Environment are made available to the public.

Yours truly,

Linda Gasser

407 Action Group

cc: Leo DeLoyde, Chair, Transportation Table
Paul Schafer, Senior Program Officer-Ontario Region, CEAA

Ontario Smart Growth Network

Ontario organizations working to stop urban sprawl and foster compact, livable communities

c/o The Conservation Council of Ontario, 215 Spadina Ave, Suite 132, Toronto, Ontario M5T 2C7
416-533-1635 smartgrowth@greenontario.org www.greenontario.org/smartgrowth/osgn.html

Mr. Blair Rohaly
Project Manager
Strategic Policy Branch
Ontario Ministry of Environment
135 St Clair Ave W, 11th Floor
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Dear Blair,

On behalf of the Ontario Smart Growth Network (OSGN), thank you for the opportunity to participate in the EA Transportation Table on Wednesday. Although I'm sure my verbal comments were recorded at the session, I would like to reiterate and add to them in this written communication.

To begin, the OSGN represents a growing number of organizations (currently 43) working to
- stop urban sprawl;
- promote sustainable, compact and healthy communities in Ontario;
- support community involvement in planning/EA decisions.

As you know, these goals can be helped or hindered by the EA process (modified or not), especially where transportation infrastructure is concerned. Below are answers to the questions posed at the November 10th meeting as well as some extra comments that are major concerns of the OSGN.

1) Inclusion of Transit Projects in the MCEA

We support the preferential treatment of green transportation infrastructure (including pedestrian and cycling facilities as well as transit ways and facilities) over all car-oriented development be it provincial or municipal. We are optimistic that a new transit class EA will ensure that this happens since investing in transit (and other green transportation infrastructure) is an investment in sustainable communities rather than a drain on the public purse. Car-oriented development undertakings are usually only about traffic flow and have nothing to do with sustainable transportation or context sensitive design (CST).

2) Integration of OPA and EA

The OSGN applauds the recommendations of linking EA more closely with provincial planning policy – as long as it is done transparently. Other acts/regulations that should be integrated with the EA Act include:
- Development Charges Act
- Municipal Act (incl. Municipal Performance Measurement Program)
- Ontario Regulation 239/02
- Public Transportation and Highway Improvement Act

Whether this is possible or not, the EA Act should be more prescriptive in setting guidelines that re-balance our present car-oriented development. This would include fast tracking EAs that support transit and cycling such as road diets, traffic calming and economic TDM measures. These measures, in turn, would meet our goals of stopping urban sprawl and promoting compact development. It is interesting to note that, in relation to TDM as a solution to traffic congestion in Halton Region, several veteran transportation planning and engineering consulting firms downplayed TDM's potential benefits "given the current legislative environment in Canada (i.e. there is little impetus for TDM specifically created by current federal and provincial legislation)". By incorporating EA with the other legislative instruments listed above, changes in this regard could finally occur.

3) Development of an improved process and aligned criteria to manage Part II Order Requirements

Bump-ups usually occur in Schedule B and C EAs because the proponent has not listened, acknowledged or acted upon public concerns. "Frivolous" requests may well be due to "frivolous" undertakings. That being said, the OSGN is very much opposed to any re-writing of the EA that undermines public participation, especially where fees are concerned. Please see our comments under Question 7 below for further information in this regard.

4) EA Scoping and Alternatives

The OSGN believes that scoping should NOT apply to any car-oriented development projects – there are many green alternatives (transit, cycling, congestion charging, tolls, road diets, traffic calming) that must always be considered. However, if the project is "green" in nature (transit, cycling, congestion charging, tolls, road diets, traffic calming) scoping out car-oriented development as an alternative would be preferred. This will ensure that we effectively use our current road capacity rather than induce more traffic.

We believe that the ToR plays a role in giving the public an opportunity to comment. However, if it is decided that the ToR requirement be removed, at least one extra PIC combined with a 30 day comment period must be provided to the public to ensure that the EA problem statement is analyzed to the best degree possible.

5) Categorization of EA Undertakings on the level of environmental impacts

The OSGN believes that the current EA categorization is sufficient and to change it is to confuse the basic issues. All car-oriented development undertakings will always have long-term impacts and should be treated accordingly. Based on many international studies and our own experience, car-oriented development undertakings to modify traffic flow will have to be remedied within two to four years after completion due to induced travel and increased congestion.

In terms of the current categorization, the OSGN recommends that all Schedule A undertakings be publicly listed by year and TMP planning period for TOTAL cumulative environmental, social and economic effects. Although they are deemed by municipal engineers and planners to have little environmental and social impact, these EAs account for 90% of all projects and are
pre-approved by municipalities without public consultation. In 2002, the Environmental Commissioner of Ontario (ECO) conducted a study of Schedule A EAs and concluded that the pre-approval of thousands of public projects is a significant problem due to the lack of opportunity for public input.

6) Enhancement of MOE's role in providing training, etc.

During the Nov. 10 session, practitioners complained about problems in learning and interpreting the EA Act. The OSGN believes that the MOE does not provide adequate training, guidance and consistency for proponents and, especially, for the public. As a non-profit organization, we are sympathetic as to the predicament of the MEA when it comes to capacity to provide EA training. Therefore, we recommend that MOE provide either training or funding to both the MEA and OSGN so they can carry out EA education on MOE's behalf.

As stipulated in Question 7 below, proponents must be taught better consulting methods whereby all EA participants can learn from and with each other (e.g. Action Learning). Training opportunities open to the public and practitioners must be available at prices that are within reach of all attendees. Different course levels must be available in the evening so that all persons can attend. An updated website that provides information in non-technical language to all citizens and proponents must also be created to ensure full understanding.

7) Public Consultation and Alternative Dispute Resolution

The EAA stipulates that public consultation is a "key feature" of the act. It "allows" public and private stakeholders to be involved in the project planning process in order to facilitate better decision making (MEA, 2000: A-54). However, this aspect of the act is in need of a total overhaul so there is true participatory planning and, therefore, a balance of power between proponent and public stakeholders (and between stakeholders themselves). If this is to happen, the process must be proactive, provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.

Part of the current problem is due to the adversarial approach to consultation which satisfies few of the parties involved. This guarantees that uncertainty remains and controversy continues well after projects are completed -- significant issues since EAs then make citizen involvement look like a façade that breeds cynicism and thereby creates more problems than it solves. To avoid this in the future, the OSGN recommends that:

- All proponents invite at least one NGO organization or community group expert to be a paid member of the project team at the commencement of a new EA (including TMPs). The OSGN would be glad to recommend people for this position.
- Intervener funding be provided to selected NGOs and community groups to better articulate their needs and concerns in regards to undertakings. This is especially important to ensure that low income neighbourhoods (who are usually the most impacted by Schedule B and C projects) can participate fully AND be able to request bump-ups at no cost to them. As mentioned above in Question 3, the OSGN is strongly against any fees that the public must pay to request a bump-up.
- the public is notified within one week that a new EA is being undertaken by all print and electronic means available.
- Based on the financial value and complexity of an undertaking, proponents adhere to a set timeline to carry out their initial EA phases so that public stakeholders know when to allocate their own time for responding to relevant reports. The financial level, complexity of the undertaking and size of reports should be used as measures to set the amount of time the public has to respond. Proponents and/or their consultants that do not meet these timelines must pay a financial penalty if the timelines are not met. If the public stakeholders do not meet their deadlines, they lose their chance to have input into the process. However, if new information or legislation emerges during these timelines, both proponent and public are provided with more time to submit reports and comments.
- A list of all private and public stakeholders be listed on EA websites for transparency. The list must include date and time of all "one-on-one" meetings.

8) Other comments

There are several other comments pertaining to language, assumptions, mobility, and accessibility that the OSGN would like to bring to the transportation table's attention.

A) Language

The OSGN is very concerned about the language in EAs themselves (e.g. reports, presentations) and the language in the Transportation Table consultation documents. Since much of the language used was developed in the 1950s and 1960s during the heyday of road building, we recommend that Ontario legislation and practitioners adopt a new non-biased transportation language policy following the same format as has been implemented in the City of West Palm Beach, Florida. The intent is to remove the biases inherent in current transportation language, be more inclusive and move the province in the direction of Smart Growth more quickly.

The City of West Palm Beach has identified and summarized objective language along with the rationale for language changes (See http://userpages.chorus.net/burleigh/issues/improve.html) Examples include the words "improvements", "enhancements", "alternatives", "accidents" and others. One of the most used and most biased word in EAs is "improvements" (scattered through the Transportation Table's document as well). According to the City of West Palm Beach, the word improvement *"is often used when referring to the addition of through lanes,* *turn lanes, channelization, or other means of increasing motor vehicle capacity and/or speeds. Though these changes may indeed be *improvements* from the perspective of motor vehicle users, they would not be considered *improvements* by other constituents of the City. For example, a resident may not think that adding more lanes in front of the resident's house is an *improvement.* A parent may not think that a channelized right turn lane is an *improvement* on their child's pedestrian route to school. By City staff referring to these changes as *improvements,* it indicates that the City is biased in favor of one group at the expense of others. Suggested objective language includes being descriptive (e.g., use through lanes, turn lanes, etc.) or using language such as "modifications" or "changes".*"

During the Nov. 10 meeting itself, the word "reasonable" was bandied about. The OSGN submits that, in the context of EA, what is and isn't "reasonable" must be thoroughly discussed both in terms of bump-up requests as well as infrastructure projects.

B) Accessibility, Mobility and Induced Travel

The OSGN is concerned about the continuing emphasis EA practitioners have implicitly put on mobility rather than accessibility. We believe that, despite predictions of gridlock and congestion, the province and municipalities actually have plenty of road capacity to accommodate its growing population and economy. Experience shows that adding to the road network leads to increasing congestion since the number of car drivers in large urban areas is elastic and will fill expanded roads, usually within two to four years. Known as "induced travel", these changes stimulate entirely new trips and vehicle miles traveled (VMT) while other changes redistribute travel that had existed on other routes. Although many highway proponents recommend road expansions because they cut pollution by reducing the time cars spend idling in gridlock, the fact is that expanded freeways always lead to greater automobile use and increased pollution.

The City of Toronto could be speaking for the entire province when it stated in 2002 that it must "make better use of our roads. In one sense, we already have the roads that we need. The problem is that most of the cars on them are three-quarters empty". So, it is really a matter of how Ontario allocates and prices the 280,000 lane kilometres of space it currently manages rather than building more of them. Asset maintenance, traffic calming, road diets and TDM will foster healthy communities at lower cost than continuing to supply more road infrastructure.

C) Flawed Assumptions

Implicit in road oriented EAs are several flawed assumptions regarding mobility, accessibility, economics and natural resources:

- as individuals buy more cars, government will build more roads to accommodate them. Governments constantly issue press releases stating that billions of dollars are being invested in roads when in fact they cannot keep up with the demand
- the current number of roads, even if they are not expanded, can always accommodate another vehicle
- the car should never be constrained by other cars. If they are constrained, car owners believe that governments are not using tax dollars effectively (which leads back to the assumption that more roads will be built)
- more roads promote economic growth. This harkens back to the 1950s when transportation investments were perceived to have only positive economic impacts. But we now experience negative economic impacts (congestion, environmental degradation, household expense). In-depth studies of wealthy cities have shown that those who have invested heavily in roads over sustainable alternatives have a gross regional product that is no better than cities with fewer roads and fewer cars
- unlimited oil and other energy supplies at low prices
- unlimited aggregate resources available at low prices

Thanks again for inviting the OSGN to participate in these important EA discussions. Please contact me if you have any questions or require more information. Better still, if we could become party to the Transportation Table's ongoing email traffic, we would be happy to add more information from the public perspective which, as we have mentioned above, is sadly lacking in this process.

Sincerely,

Marty Collier

Marty Collier
Manager, Ontario Smart Growth Network

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theDon

DON WATERSHED REGENERATION COUNCIL

Comments by the Don Watershed Regeneration Council on
Improvements to Ontario's EA Process
EBR Registry Number XA04E0015

BACKGROUND ON THE DON WATERSHED REGENERATION COUNCIL – WHO ARE WE?

The Don Watershed Regeneration Council (DWRC) is a volunteer, watershed-wide advisory committee established by Toronto and Region Conservation (TRCA) in 1994 to help restore the Don River watershed to healthy, sustainable natural environment. The DWRC is composed of community members, elected officials and representatives from municipalities, agencies, businesses, environmental non-governmental organizations (ENGOs) and academic institutions located within the watershed boundary. The DWRC is a subcommittee of the TRCA's Watershed Management Advisory Board. A comprehensive strategy – *Forty Steps to a New Don* – was endorsed in 1994 and through the efforts of thousands of volunteers and in partnership with municipalities and other environmental groups we are achieving some progress in applying the strategy. Three major principles guide us – protect what is healthy, regenerate what is degraded and take responsibility for the Don.

Since then, we have produced three report cards that document the need for bold steps to ensure that the Don Watershed is protected and enhanced.

DWRC COMMENTS ON IMPROVEMENTS TO ONTARIO'S EA PROCESS

General - Purpose of the EA Process
The purpose of Ontario's Environmental Assessment process as originally designed, is to ensure that proponents consider environmental effects at an early stage in planning projects so that negative impacts could be avoided to the greatest extent possible. This precautionary or preventative approach is to ensure that proponents consider alternative types of projects to choose the one that is the most beneficial in terms of meeting the proponent's goals (or solving their problems) while minimizing environmental impacts. As a secondary measure, the environmental assessment process is to ensure that residual environmental impacts are mitigated through alternative means of carrying out the projects or post construction remediation. It is also envisioned, that the proponent might sometimes determine that proceeding with any undertaking is inappropriate where significant environmental impacts will occur.

In undertaking the current review to identify improvements to Ontario's EA process, the Panel is encouraged to ensure that the original purpose of the EA process is enhanced and achieved. Recent experience indicates that the proponents are focusing on how to remediate the negative impacts associated with their projects more than they are considering alternatives to their undertaking that would avoid the environmental impacts in the first place.

Often, the focus of the environmental assessment process is the preparation of the environmental assessment document rather than on ensuring sound environmental planning.

RESPONSE TO PANEL'S TERMS OF REFERENCE

1.0 NEED FOR PRESCRIPTIVE REQUIREMENTS, POLICIES & TECHNICAL GUIDELINES

1.1 The DWRC supports the need to establish clear, prescriptive rules for proponents.

These rules should deal with both the initial phase of the project prior to establishing Terms of Reference (TOR), as well as the subsequent phases.
The rules should be flexible enough to eliminate significant work on factors which are of limited relevance in the specific case and allow more emphasis on those that have emerged as true impacts and issues to be addressed.
For example, prescriptive requirements are needed for public consultation. Routine public information centres are not sufficient to allow the public to understand the process and the details of the project. (see also comments under section 3 below).

In addition, proponents often pursue projects which are being proposed to address perceived problems. True, meaningful engagement of the stakeholders is essential to ensure that the solutions address the broad community need. Experience in the United States on the use of Context Sensitive Solutions/Design may offer an improved process for stakeholder engagement and solution development. Further information on this approach can be found in the National Cooperative Highway Research Program (NCHRP) report titled *A Guide to Best Practices for Achieving Context Sensitive Solutions* (NCHRP Report 480) - http://trb.org/publications/nchrp/nchrp_rpt_480.pdf.

1.2 The DWRC recommends that the MOE establish requirements for the Terms of Reference.

1.2.1 We recommend that it become mandatory for the proponent's TOR to outline how impacts of projects on ecosystem form and function will be considered in addition to impacts that may occur on the various species or communities affected by the project.

Cumulative impacts of previous or related projects must also be considered. In an area like the Don Watershed with very limited natural areas and considerable fragmentation, each new project is extremely significant on the long-term viability of the watershed and the potential remediation. The list appended to this document inventories the almost 40 EA projects (Class EAs, Individual EAs and EA Master Plans and Studies) in the Don Watershed since 2000. A map of the Don Watershed boundaries is also appended for your reference. This intensive activity has significant and unassessed cumulative impacts (see also comments in section 2.1.2 below).

1.2.2 The DWRC continues to endorse and advocate that watershed and

sub-watersheds provide the preferred geographic area proponents should be considering in assessing the impacts from development proposals.
We have previously submitted comments on this issue in our submissions on the Source Drinking Water Source Protection Act and Policy to the Ministry of the Environment. Copies are available for your consideration, if you wish.

1.2.3 The DWRC recommends that proponents should be required to address, and to report on overarching environmental sustainability impacts, such as global warming, air quality, resource conservation, and source water protection impacts of the alternatives and the proposed undertaking.

1.3 The DWRC recommends that the Ontario government ensure better integration of planning and environmental decisions so that sustainable communities can be developed.

The apparent disconnect between the land use planning decisions made under *The Planning Act* and decisions on projects and undertakings under *The Environmental Assessment Act*, creates the serious problem of piecemealing municipal decision-making on the related matters. Municipal, or provincial, approval of a new subdivision results in demand for new roads, transit, waste, energy, water and sewage infrastructure and other services to match the needs of the new residents. Carrying out any of these subsequent municipal government actions will trigger the EA Act either as individual or class EA projects. When the EAs are carried out, proponents (often the municipality that made the land use decisions) claim that they have no alternatives but to build the new road or install new infrastructure – the classic model of piecemealing.

It is recommended that the servicing issues inherent in the land use planning decisions are explicitly considered at an early stage and in sufficient detail so that the environmental impacts of the ancillary services can be assessed/avoided at the land use planning stage. In other words, the land use planning decisions should be integrated with the master plan process typically undertaken as part of the infrastructure planning process and the environmental assessment requirements for the specific infrastructure undertakings.

1.4 The DWRC recommends that provincial guidelines which set out provincial priorities, like the Provincial Policy Statements under *The Planning Act*, established by the appropriate provincial ministries with which proponents must comply when planning and/or carrying out undertakings.

The relevant provincial guidelines should form part of the TOR for the proponent.

2.0 DECISION-MAKING/APPROVAL PROCESS

2.1 The DWRC has concerns about the projects which have been or are being planned using the Class EA process for road and water/waste-water related projects. These concerns are generally related to projects which commence under the provisions of the Class EA process but which have significant impacts and warrant individual EA treatment; and/or have piecemealing impacts.

2.1.1 Class EA projects with significant impacts - Two recent/current examples in the Don Watershed are road projects in the Region of York to open unopened road allowances and to increase the number of traffic lanes in areas of recognized provincial and local natural environment significance and where significant natural environment impacts from the project were anticipated. The proposed Teston Side Road and Pine Valley Drive projects were both started as Class EA projects and are now, or have been promised to be carried out by the Regional Municipality of York as individual EAs due to significant public concern and objection to the proposals.

As can be imagined, since the Region has already identified a plan to construct specific right-of-ways it is hard to expect that the Region can go back now and carry out a proper individual EA with consideration of alternatives to building the road to service the expected needs of residents in areas planned for, but not yet built out.
The Environmental Commissioner in *Choosing Our Legacy* has also documented a number of problems with the Class EA for Municipal Projects and the Class EA process in general. We concur with his findings found on pages 56 to 59.

It is recommended that consideration be given to limiting the application of the Class EA process to road projects by introducing more restrictions on the types of projects that can be carried out under the Class EA approval.

2.1.2 Piecemealing/Incrementalism Concerns – As described in items 1.2. and 1.3 above, incremental impacts from projects and piecemealing makes it very difficult to protect and remediate natural areas and ecosystems in the Don Watershed. Appended to this submission is list of the approximately 40 EA projects under review, planned or built in the Don Watershed since 2000.
It is beyond our ability as the DWRC to be able to ascertain the cumulative impact of all these projects on the objectives and goals set out in *Forty-Steps to a New Don*. It is also extremely difficult to provide meaningful comment and criticism during the review phase of an EA or a Class EA.

It is recommended that a regular review of the cumulative impact of projects within key geographical areas, such as watersheds, be undertaken by the province and Conservation Authorities to refine and set out environmental protection goals and restrictions on environmental impacts so that viable ecosystem function can be maintained and restored.

The DWRC would be pleased to assist the Province, the Toronto Region Conservation Authority and other partners to undertake a demonstration project in the Don Watershed to pilot this approach.

3.0 PUBLIC PARTICIPATION

3.1 The DWRC observes that the public participation process is very difficult unless the individuals are well-versed with the EA process. The process largely relies on stakeholders identifying themselves to the process rather than the process endeavouring to identify stakeholders and draw them in with meaningful engagement. Typically, proponents try to keep under the radar and reduce opposition rather than seeking it out and determining how to develop a solution that fits the situation. To permit interested groups to provide meaningful participation, they need to have sufficient lead-time to get involved. The short deadlines for comments frequently make it a scramble to provide comment or to find out in time to participate.

The Environmental Commissioner (ECO) in his recently released Annual Report for 2003-2004, *Choosing Our Legacy*, has also highlighted weaknesses of the current public consultation processes under *The Environmental Assessment Act*, which mirror the experience and frustrations of the DWRC. The findings of the ECO regarding the shortcomings of the Class EA process for Municipal projects are particularly relevant to the problems we have outlined in this submission (see pages 56 to 57 of *Choosing Our Legacy*).

3.2 The DWRC recognizes that developing TOR for projects can be appropriate where sufficient work has been undertaken to allow for understanding of the issues and conditions within the study area. Some scoping of a project at the TOR stage allows for some engagement of the stakeholders and certainty for both sides of the process.

However, to have meaningful input, it is necessary to have a greater opportunity to participate. When at the TOR stage there are only study area "blobs" and promises for more detail at the EA stage because the TOR cannot even identify the type of project that is being considered does not permit stakeholders to make meaningful comments and to assess if their comments are subsequently addressed. See also comment under section 1.1 above on the use of Context Sensitive Solutions/Design as one approach to improving the process for stakeholder engagement and solution development.

3.3 In the case of TOR, environmental non-governmental organizations and individuals experience great difficulty in providing comments because of the generality of the TOR and the fact that they are posted only on the ministry's website. This situation weakens the whole EA process since the TOR limits the scope of what will be subsequently studied.

3.4 It is recommended that the province provide a free subscription service and list that would provide advance notice of upcoming EAs within a geographical area or type of EA.

This service would reduce the need for individuals and ENGOs to check out the EBR Registry on a regular basis and provide the opportunity for more constructive involvement in the EA planning process. For community groups that do subscribe to the EA service notices, it is recommended that the province provide information sessions on a regular basis to describe the EA process and how to contribute and participate.

4.0 MONITORING AND REPORTING

The activity of monitoring and reporting on post-construction effects and mitigation is problematic.

Are the conditions of approval monitored? Does the information learned on one project get carried forwarded or transferred to improve the next project? How does an individual or ENGO access the information? How are cumulative impacts assessed? Who guarantees the authenticity of the data and information and study results? How can a group like the DWRC be assured that our concerns have been addressed when the issues are raised?

This issue requires, and deserves, immediate attention by the Ministry of the Environment, the approval authority under the Environmental Assessment Act.

October 28, 2004

APPENDIX 1

EA Projects in the Don Watershed
2000 to Present

EA RELATED MASTER PLANS AND STUDIES
York-Peel Feedermain Long Term Water Project Master Plan Update
York-Durham Trunk Sewer System Master Plan
Transportation Master Plan YR (Spin Off EA Files - Hwy 7 corridor, Yonge St corridor, Markham

N/S Link, Woodbine Ave Transp. Study)
Master Plan for the Central Business District/Village Core Yonge Street Area
Aurora/Newmarket Water Supply
Borough of East York Rosemount Heights Combined Sewer and Siphon
Dufferin Street Langstaff to Rutherford
Bathurst Street Widening Gamble Rd to Hwy 9

ONGOING EAs
EAs Received in 2000
YDSS Bathurst Collector/Langstaff Trunk Sewer
Teston Road Pine Valley to Bathurst
Yonge Street Corridor Transitway Steeles to Bloomington
Highway 400 Major MacKenzie to 16th SR/Vandorf Road

EAs Received in 2001
Lesmill Road Improvements Between Leslie St. and Duncan Mill Road
Hwy 7 Corridor Albion/Vaughan to York/Durham

EAs Received in 2002
York Durham Sewage System Southeast Collector
York-Peel Feedermain Route Selection Airport to Keele in the Vicinity of Rutherford
Toronto Waterfront Revitalization Concept
Lower Don River Naturalization and Flood Protection EA
Go Transit Lakeshore East Corridor Rail Bayview to McCowan

EAs Received in 2003
Extension Maple Pressure District 7 Watermain Network
Don Valley Corridor Master Plan Waterfront to Steeles Avenue
Portlands Energy Centre
Surface Transit on Yonge Street Finch Avenue to Steeles Avenue
Go Transit - Temporary Layover Facility
Hogg's Hollow Stormwater Management and Road Improvement Study
Hwy 401 Rehabilitation Avenue Road to Hwy 404
Major Mackenzie Road PD6 Watermain Dufferin to Bathurst

EAs Received in 2004
Toronto Portlands System Reinforcement
Spadina Subway Extension
Biosolids and Residuals Mater Plan
Highway 404 Mid-Block Crossing Highway 7 to 16th Avenue
Earl Bales Park Area Stormwater Management Plan

COMPLETED EAs
EAs Received Prior to 2000 - Now Complete
Rutherford Road Weston Road to Jane Street
Highway 7 Hwy 27 to Kipling Avenue
Centre Street Improvements

EAs Received in 2001- Now Complete
O'Connor Drive Improvements Bermondsey Rd to Victoria Park

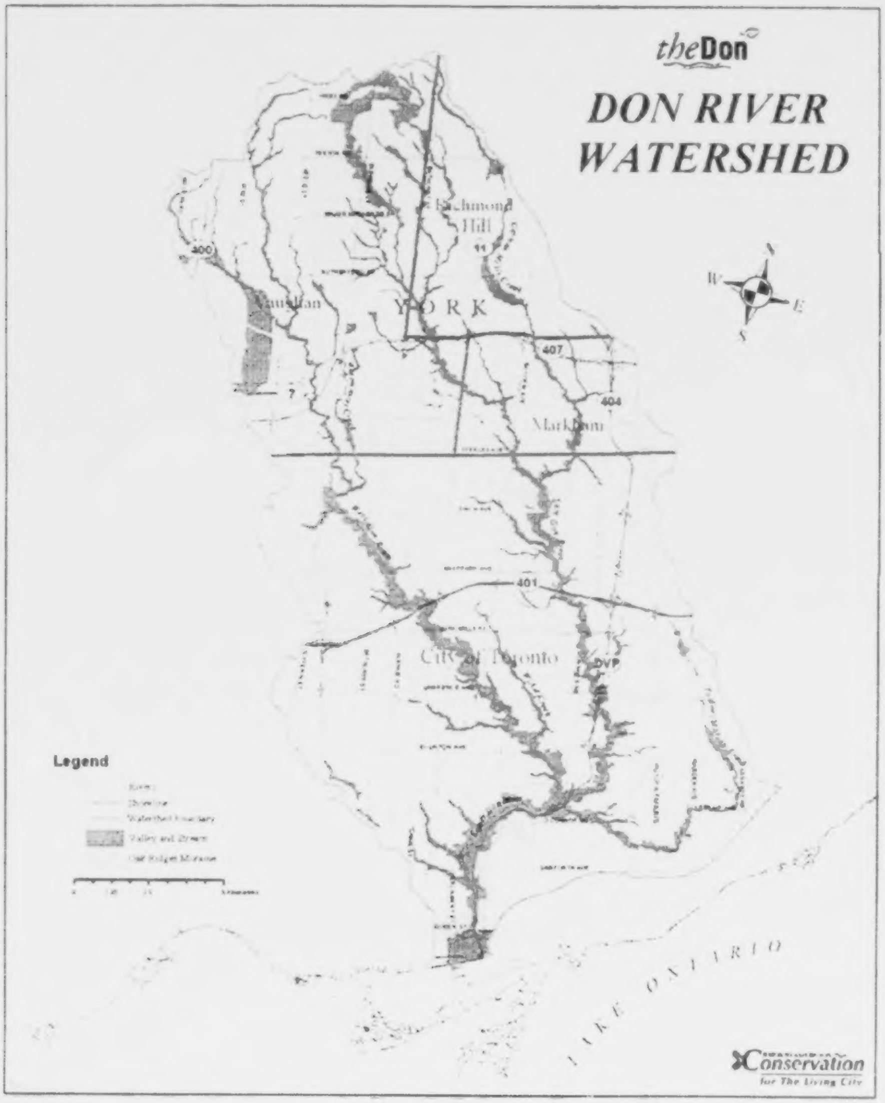
EAs Received in 2002- Now Complete
Keele Street Hwy 407 to Highway 7

EAs Received in 2003- Now Complete
ORC Topsoil Distribution

EAs Received in 2004 - Now Complete
Sanitary Sewer Improvements - District 3

APPENDIX 2

MAP OF THE DON RIVER WATERSHED


theDon
DON RIVER WATERSHED
Richmond Hill
11
400
Vaughan
YORK
407
7
404
Markham
401
City of Toronto
DVP
W
N
E
S
Legend
Rivers
Shoreline
Watershed Boundary
Valley and Stream
Oak Ridges Moraine
0
1.25
2.5
5 Kilometers
LAKE ONTARIO
Conservation for The Living City

Appendix II - Proposed EAA and EPA approvals requirements and EPA Approvals Requirements

Type of Proposal	Approval under Section 30 of EPA / EAA triggered	Approval under Section 32 of EPA
Establishment of a Landfill or Thermal Processing Site	**Yes – for establishment of all new disposal facilities (remove reference to domestic waste generated by not less than 1,500 persons)** **Additional Recommendation** Develop regulation under subsection 6 (2) (b) of the EAA to proscribe EA Terms of Reference requirements for public sector undertakings (note requirements for small scale undertakings should be less than larger scale) and private sector undertakings	**No**
Enlargement of a Landfill or Thermal Processing Site Enlargement being defined as an increase in the capacity of the facility whether it be an annual capacity increase in the case of a Thermal processing site, or an increase in the total fill area for a landfill.	**Depending on scale/nature of undertaking** Scale: based on percentage of existing capacity, for example proposed expansions of greater than 25% of existing capacity would require approval under Section 30. Nature: in regards to landfills would differentiate between upward expansions (lifts) and expansions of footprint. All expansions of footprints greater than 25% would require approval under Section 30. **Additional Recommendation:** Regulation under subsection 6 (2) (b) of the EAA to proscribe EA Terms of Reference related to proposed expansions, the intent being to reduce or eliminate requirements to consider alternatives to, however, alternative methods would still need to be addressed.	**Depending on Scale/nature of Undertaking** For example, proposed expansions of up to 25% of existing capacity would require approval under Section 32. For example, upward landfill expansions within standard landfill design parameters regardless of percentage increase would require approval under Section 32. **Additional Recommendation:** Amend the EPA to include ability for public to request EPA hearing, to ensure that proponents design expansions taking into account participant concerns.[1] Develop regulation to define requirements that would have to be met for a hearing to be held.[2]
Application to alter or extend the life of a Landfill or Thermal Processing site including amendments to EAA conditions.	**No** **Additional Recommendations:** In regards to amendments to EAA conditions, the majority of conditions of which the Waste Panel was aware, do not	**Yes** **Additional Recommendations:** Amend the EPA to include ability for public to request EPA hearing.[1] Develop regulation to define

Alterations being defined as any one of the following: design changes, service area changes, rate of fill changes, and fuel substitutions. Extensions being defined as the extension of the operating timeframe for the facility, not associated with any increase in capacity.	appear to be of a nature that should require approval under the EAA. However, it is recommended that the MOE review the EAA conditions on record and determine if a subset should in fact require EAA approval if any changes are proposed.	requirements that would have to be met for hearing to be held.[2]
Transfer Facility	**No**	**Yes** **Additional Recommendation:** Develop Regulation under the EPA to set out public consultation provisions, siting provisions and design and operation provisions for transfer facilities.[3] Note: no extended storage of materials on-site would be permitted under the regulation. Transfer facilities must meet these provisions for approval. If not, proponents could make a request to the Minister to designate their transfer undertakings under the EAA at their own discretion.
Processing **This category includes:** All Biological processing undertakings of MSW, both aerobic and anaerobic composting or digestion of any size. All Physical/Mechanical processing of MSW, regardless of whether the waste received is source separated or not..	**No**	**Yes** **Additional Recommendations:** Amend the EPA to include ability for public to request EPA hearing.[1] Develop regulation to define requirements that would have to be met for hearing to be held.[2] Develop Regulation under the EPA to set out public consultation provisions, siting provisions and design and operation provisions. [3] Reasonable provisions for storage of materials would be included. Processing facilities must meet these provisions for approval. If not, proponents could make a request to the Minister to designate their processing undertakings under the EAA at their own discretion.

No limitations in regards to residue production are advised, as the disposal sites for such residue would still require approval.		
Research Scale / Demonstration Facilities	**No**	**Yes** **Additional Recommendations:** Amend the EPA to include ability for public to request EPA hearing. 1 Develop regulation to define requirements that would have to be met for hearing to be held.[2] Certificates of approval for demonstration facilities should be time limited.

Notes:

1 Amending the EPA to provide the ability for the public to request an EPA hearing would replace the current situation where the public requests a 'bump up' to an Environmental Assessment. The language currently included in section 9.3 of the EAA would be reasonable for inclusion in the EPA.

Appendix III – Workshop Attendees

James O'Mara
Ministry of the Environment

Andj Dominski
Ministry of the Environment

Lawre Freiburger
OWMA

Gary Komar
Dillon Consulting Limited

Pat Parker
City of Hamilton

Eric Advokaat
Canadian Environmental
Assessment Agency

Pamela Hubbard
PMHubbard and Associates

Gordon E. McGuinty
Notre Development
Corporation

Derek Cathcart
Miller Waste Systems

Paul Murray
Gartner Lee Limited

Lee Doran
Ontario Association for Impact
Assessment

John Backer
Preservation of Agricultural
Lands Society

Bev Thorpe
Don Valley Regeneration
Council

David Merriman
MacViro Consultants Inc.

Trish Johnson
City of Ottawa

Rob Cook
OWMA

Andre Lafleche
LAFleche Environmental

Andrew Campbell
Regional Municipality of York

Karen Davies Buck
Citizens for a Safe
Environment

Michael Rosenberg
Economics of Technology
Working Group

Maria Kelleher
Kelleher Environmental

Grace Patterson
City of Toronto

Geoff Rathbone
New and Emerging
Technologies
Policies and Practices
Advisory Group

Lawson Oates
New and Emerging
Technologies
Policies and Practices
Advisory Group

Rod Muir
Sierra Club of Canada and
Waste Diversion Toronto

Brian Forrestal
Waste Services Inc.

Donna Bisch
Product Management
Corporation Inc.

Kevin Bechard
Waste Management

Michael Cant
Totten Sims Hubicki
Associates

Wayne Jackman
PSC Industrial Services
Canada Inc.

Robert Webb
Republic Services of Canada,
Inc.

Linda Churchill
Region of Waterloo

Steve Plaice
Jacques Whitford Ltd.

Sheri MaKinnon
Region of Peel

Andrew Pollock
Region of Peel

Nancy O'Blenes
Atlantic Packaging Products
Inc.

Steen Klint

Rob Owens
Durham Region

Brian Howieson

Luiza Furtado

Submissions were also received by the Waste Management Panel from:

Rhonda Hustler, Warwick Watford Landfill Committee
Andrew Pollack, Director, Waste Management, Peel Region
Gracia Janes, Environment Convenor, St. Catharines and District Council of Women.

SECTOR TABLE RESPONSES TO DRAFT FINAL REPORT

TRANSPORTATION PANEL RESPONSE TO ONTARIO ENVIRONMENTAL ASSESSMENT REVIEW: DRAFT FINAL REPORT DATED FEBRUARY 1, 2005

FEBRUARY 15, 2005

INTRODUCTION

The Transportation Sector appreciates the opportunity to respond to the Executive Group's February 1st 2005 draft report. We are also pleased to see our detailed recommendations appended to the main report.

Please appreciate that this document represents a consensus view from a transportation standpoint. Our Table's constituent groups reserve the right to make individual comments.

There is considerable tension between the concept of expediting projects and streamlining approvals while maximizing public input. Although the Executive Group has identified many process innovations and remedies, some members of the Transportation Panel are concerned that the changes will substantially impede existing EA processes eg. Increased reliance on the ERT and ADR and the creation of EA advisory/liaison committees.

We anticipate that this tension will always be with us as we try to balance the many competing demands in our society.

The following comments deal with the items that the Transportation Sector Table supports, matters that require further discussion, items that we disagree with and specific comments:

POINTS OF AGREEMENT

The Transportation Sector Table generally agrees with Executive Committee recommendations which:

- Sets out clear objectives for the EA system
- Establishes eight principles in a policy guideline*
- Expands the list of statutes to which EA approvals are linked/integrated/consolidated
- Mandated consideration of reasonable alternatives

- Avoiding scoped terms of reference for individual EAs
- Adds transit to the Municipal Class EA approvals system
- Connects decisions on EA approvals to Provincial Policy statements
- Harmonizes provincial EA approvals with CEAA approvals
- Establishes firm and predictable time lines for decision-making
- Creates an independent body to adjudicate process and substantive conflicts
- Maintains a comprehensive website on the status of various projects
- Improves training and EA practice for the all stakeholders
- Establishes minimum thresholds for public particpation
- Creates enhanced and informative monitoring and compliance procedures
- Depoliticises Part 2 bump up requests by providing for summary adjudication for bump up and procedural conflicts independent system is put in place to remove wide range discretion thus expediting decision-making
- The strategic use of Alternative Dispute Resolution to scope and resolve issues in a predictable and timely way**
- Creation of a permanent advisory body external to the MOE to obtain expert advice on consultation and other EA matters and track progress***
- Establishes clear rules for all EA stakeholders

Notes and Caveats:

* Principles must be very carefully worded to avoid unintended consequences. The Transportation Table's concern about potential problems arising from a broad/extreme interpretation of the proposed precautionary principle remains.
** The Transportation Table is concerned that ADR may be required for very basic and minor approvals or undertakings.
*** Role, costs and process benefits of a permanent advisory body are unclear and need to be identified before deciding to proceed with implementation of Recommendations 6 and 7. A specific concern is that an advisory panel may unduly interfere with the smooth operations of the Class EA system now in effect for transportation projects. This concern does not extend to individual EAs or other sectors' EAs.

TOPICS WHERE FURTHER WORK IS REQUIRED

The Transportation Sector Table agrees with the following Executive Committee recommendations to require that further work be undertaken to:

- Prepare detailed sectoral reviews of several issues including the identification and facilitation of "green projects" *
- Develop transportation sector specific procedures

- Consider bringing master transportation studies under the EA Act
- Finalize a five-category EA system and ensuring that the rigor of approvals, public particpation, documentation and public process are commensurate with the significance of the project.
- Create a new provincial green projects facilitator**
- Finalize the MOE's long awaited draft ADR guidelines especially for the various stages of individual EAs before process decisions are crystallized too early in the process.

Notes and Caveats:

*The Transportation Sector is split on the notion of giving priority to green related projects.

Some are not in favour of giving priority to projects such as transit simply because they are green. They question the underlying assumption in the Executive Group's report that since "green" projects have no impacts they should receive approval priority. They feel that all projects with similar impacts should be subjected to the same level of review - a transit-only roadway has the same physical impacts as any other road but it is currently held to a higher standard.

Other Panel members see merit in giving priority to societally and environmentally beneficial green projects. The premise of Recommendation 5 is to develop like requirements for like projects across all sectors, as determined by the future working groups. If the working groups are given adequate flexibility in their tasks, these issues should be addressed.

All Transportation Panel members agree that green transit projects should not be disadvantaged compared to other projects such as a car oriented road-only project.

The concept of having someone at the provincial level facilitate the process could be beneficial during the Provincial review period (for Individual EA's) or through Part II orders (for Class EA's).

** Costs, roles and process benefits of a new provincial green project facilitator are unclear and need to be identified before deciding to proceed with implementation of Recommendation 12.

POINTS OF DISAGREEMENT

The Transportation Panel disagrees with the following points and recommends that the Executive Group abandon the following recommendations:

- Reintroduction of intervener funding
- Fees for EA training and programming*

Notes and Caveats:

*EAs apply almost exclusively to government undertakings. Adding training and programming fees to the EA approvals regime is akin to one order of government charging another order for the privilege of implementing its legislative requirements. The application of GST to government purchasing was abandoned since the same taxpayer must fund a government tax on another government. Fees for notices of completion are viewed as a new downloading of costs. Fees for bump-up requests would have to be significant to cover costs. Making proponents pay when the have done everything 'by the book' seems wrong. The Transportation Panel recommends that the Province pay for the training and other adjudicative costs associated with implementing its legislative programs.

SPECIFIC COMMENTS

Recommendation 5 New Five Category System

Considerable work is needed to make the 5-category system workable. Success depends on the direction and degree of flexibility given to the sectoral working groups. The message that should be given to the transportation sector folks is that:

1. The Class EA process works reasonably well, although some tweaking is required; and
2. Use of the Class EA approach should be expanded.

Recommendation 5 is perhaps too prescriptive (page lengths of reports, for instance). Further there is a need for clarity on the direction given to the Sectoral working groups. For example, will the Class EA system be replaced by new regulations or should they be recommending additions or adjustments to the existing Class EAs.

Category 1 (Schedule A) Notice of Completion, or any paperwork for that matter, is not practical for things such as routine maintenance activities).

Category 2 (between Schedule A & B) 10 pages documentation seems excessive.

Category 3 (Schedule B) Very strong opposition to participant funding, mandatory mediation and hearing. Maximum Time should be 2 – 3 months.

Category 4 (Schedule C) Very strong opposition to participant funding, mandatory mediation and hearing. Time should be 4 – 8 months.

This represents a major change to the Class EA process and would make approvals much more onerous.

Category 5 Should be onerous and extensive depending on the magnitude of the project and the extent of its greenness or lack of greenness. For example, a new 400 series highway should take many years to review and resolve in the context of alternative modes of transportation.

Recommendations 18 & 19 Adjudicating Bump-Up Requests

The Transportation Panel questioned the independence off the Minister of the Environment in deciding bump up requests and recommended creation of an independent arbiter of Part 2 order requests. In theory, the Executive Group's adjudication solution helps address this issue. However, the panel is very concerned that this measure will be applied too broadly especially with respect to routine minor projects thus burdening the system unnecessarily. Processing "bump-up" requests during the process could add significantly to the time as opponents seeking to delay a project could take multiple opportunities to object to achieve non bona fide outcomes.

There also seems to be an underlying perception in the Executive Group's document that proponents routinely try to circumvent the process and more controls need to be put in place to protect the environment and the public interest. The Panel questions the suggestion by the Executive Group that the right to request an interim ruling as described in Recommendation #18 will be seldom used. Opponents may well use this adjudicative vehicle as the "object early - object often" rule. Some Panel members would strongly support #18 if it were only available to proponents who would benefit from interim rulings to create process certainty.

The Panel is less concerned about who handles bump-up requests as long as they are processed in a timely manner. The EA Branch and the Minister now have trouble managing their workload. The Panel believes new resources will be needed to handle the increase in workload associated with the proposed new bump up adjudication process.

To avoid a run-up of costs and duplication, the Transportation panel recommends that the adjudication process apply to only Category 3 and higher EAs.

Recommendation #20

Timeframes and deadlines are routinely not met by MOE staff. Thus, this recommendation neither captures nor resolves the problem.

Recommendations 26-31

The MEA has been monitoring the Municipal Class EA for five years and has not identified the problems set out in the Executive Group's report. Further, these "compliance" issues appear to be outside of the scope and purpose of this EA process review. However, there is some justification to impose such requirements for individual EA projects and projects in other non-transportation sectors. The Transportation Panel recommends that further analysis be undertaken before implementing any targeted monitoring and reporting initiatives.

CONCLUSION

The Executive Group feels they've struck a balance between improving the speed and rigor in the process, but perhaps they need to take a step back, acknowledge this is just a starting point given the short timeframe within which it was developed, and give more responsibility to the future working groups to truly establish the impact of their recommendations.

As requested by the Minister, the Transportation Panel's 2004 report contained in the appendix of the Executive Group's report is focused on fixing problems and fine tuning things that are working well. As noted in our report, the existing Class EA process works very well for most projects. Changing the Class EA entire process to deal with a relatively small number of issues not advisable.

Changes are clearly needed however to the individual EA system (eg. scoping, lack of alternatives, proponent driven terms of reference, lack of meaningful public involvement), and many of the recommendations in the Executive Group's report will remedy the identified problems.

The intent of expediting the EA process, improving cost efficiency, and improving clarity has the potential to be diminished unless we exercise significant care in implementing the Executive Group's findings in a measured and considered manner.

Countervailing the effectiveness and efficiency push is the need to have decisions made in a transparent way in the public interest. There is significant risk that the Class EA process can become more cumbersome, lengthy and expensive if the recommended adjudicative, monitoring and reporting reforms are unnecessarily extended to minor and routine EA projects.

The Transportation Panel appreciates the opportunity to share our comments and supports the recommendation that further work be undertaken with a broad range of stakeholders to finalize sector specific EA improvements.

Submitted on behalf of the Transportation Panel

Leo DeLoyde, Chair

Nigel Guilford, Janine Ralph and Howard Goldby
As Members of the
WASTE MANAGEMENT PANEL
ENVIRONMENTAL ASSESSMENT ADVISORY PANEL
c/o Ontario Waste Management Association,
20005 Clark Boulevard, Unit 3, Brampton, ON L6T 5P8.

February 11, 2005

Richard Lindgren,
Executive Group, Environmental Assessment Advisory Panel
c/o Canadian Environmental Law Association,
130 Spadina Avenue, Suite 301,
Toronto, ON M5V 2L4

Subject: **Review of Executive Group Report**
Ontario Environmental Assessment Review: Draft Final Report

This letter presents a review of the draft recommendations made by the Executive Group of the Minister of the Environment's Environmental Assessment (EA) Advisory Panel, dated February 1, 2005 which was received by e-mail on February 4, 2005. This review was completed by Nigel Guilford, Ontario Waste Management Association; Janine Ralph, Region of Niagara and Howard Goldby, BFI Canada Inc. We understand that you have already received individual comments from Mr. Paul Rennick. Unfortunately, due to the pressures of other priorities, our other panel members, Mr. John Jackson and Mr. Usman Valiante, were unable to provide their comments at this time and they have asked that their regrets be expressed in this letter.

This review is focused on the identification of areas of agreement or inconsistencies with our Panel's report to the Executive Group dated November 22, 2004.

Introduction

Initially, we would like to reiterate that, at the start of the sectoral review of the Ontario Environmental Assessment Act in late September, 2004, our members expressed concern at the lack of time provided for meaningful input, assessment of differing views and the panels' resultant ability to be able to develop EA reform recommendations. At that time, the Executive Group required submission of recommendations from sector panels by mid-November 2004, in order to meet the deadline of December 31, 2004 for incorporation into an EA review report to the Minister from the Executive Group.

Nonetheless, our members, as we are sure was the case with the other sectors, took the challenge presented to us very seriously and produced what we believe is a set of well-thought out, comprehensive recommendations based on our members' expertise and input from others, particularly from the workshop.

The recommendations in our report were all made in context and are designed to be read "in whole" and not in part or out of context. The Executive Committee report, in many instances, includes partial statements "cherry-picked" from our recommendations; the effect of which is to change the meaning of those recommendations in our report. In some cases we note that the Executive Group report states that our panel supports positions taken by the Executive Group and uses selected text from our report to illustrate the point. However, when reading the full text from our report, in its proper context, a different meaning may be evident.

The draft Final Report from the Executive Group includes positions and recommendations which have not been aired fully in consultation with the Waste Management Panel or the other Panels, and have not had the benefit of public scrutiny.

Review of Executive Group Recommendations

The Executive Group report and recommendations are built upon several stated principles from which the Executive Group takes its reform positions. We endorse the need for guiding principles but maintain that the principles should not merely reflect Executive Group but should be established through further consultation. As an example, we agree that the inclusion of "sustainability benefits" and the "precautionary principle" may be excellent ideals but, in our opinion, it is unclear how these principles can be effectively applied to the EA process.

We have reviewed each recommendation and present a brief comment on each as follows:

Recommendation No. 1 – General Need for Principles, Policies and Procedures – Agreement in principle with the need but have concerns with giving preferred status to green projects. There is a wide divergence of opinion on the definition of 'green projects', which requires further discussion.

Recommendation No. 2 – EA Act Principles – Endorse the need for EA principles, but as noted above, these principles should be established through further consultation to ensure that they can be applied to the EA process.

Recommendation No. 3 – Sector Specific Policy – Endorse the need for sector-based policy but have concerns with giving preferred status to green projects. There is a wide divergence of opinion on the definition of 'green projects', which requires further discussion. The Waste Panel proposed a much broader approach to the development of sector specific policy (see Waste Panel report Recommendation 2). This recommendation requires more consultation and should be moved to Chapter 4 of the Report.

Recommendation No. 4 – Establishment of Sector Working Groups - Endorsed

Recommendation No. 5 – EA Procedures – Within *Recommendation No. 5* a process is set out in a series of charts. This methodology was originally included in the Executive Group draft October Progress Report to the Minister, but was not included - correctly in our opinion - in the final October Progress Report after significant questioning of its validity by the Waste Management Panel and by, we understand, the other Panels as well. The process set out in these charts was never re-presented to our Panel for review and, unfortunately, it now forms a central theme to the entire proposed EA process revision presented by the Executive Group. We believe that these procedures should NOT be used as a foundation for EA reform in their current form and that they require significant further consultation with affected parties to create a workable process that will achieve the stated aims of this EA Review initiative. In their present form, we believe they may, in fact, hinder and further delay process rationalization. Specifically, therefore, we strongly recommend that both the process and the Draft Charts be moved in their entirety to Chapter 4 for further consultation.

Recommendation No. 6 & 7 – Provincial Advisory Body - An interesting idea that, while potentially beneficial, warrants further discussion to determine, for example, how the Government would reconcile the competition for scarce human and financial resources between an already understaffed EAAB and a new body – the Provincial Advisory Body. The first priority should be the EAAB. This recommendation requires more consultation and should be moved to Chapter 4 of the Report.

Recommendation No. 8 & 9 – Public Participation – Agree in principle

Recommendation No. 10 – First Nations Participation – Agree in principle

Recommendation No. 11 – Public Participation / Willing Host – Agree with objective, proposed methodology requires more consultation.

Recommendation No. 12 – Project Facilitation – Agree with the concept of an EA Project Facilitator to move projects forward smoothly but we believe that ALL projects should be facilitated not simply 'green projects'.

Recommendation No. 13 & 14 – Hearings ADR Mediation – An interesting concept which has not been raised previously in this process and requires additional consultation. This recommendation should be moved to Chapter 4.

Recommendation No. 15 - 17 – Integration – We don't believe a persuasive case has been made to justify these recommendations, and recommend that they be moved to Chapter 4.

Recommendation No. 18 &19 – Class EA – No comment

Recommendation No. 20 & 21 – Timelines – Agree in principle

Recommendation No. 22 – EA Web Site – Agree in principle, provided that it is maintained appropriately and is always up to date.

Recommendation No. 23 - 25 – Fees – Endorsed

Recommendation No. 25 - 31 – Monitoring and Reporting – As stated at our meeting with the Executive Group in December, we do not believe that monitoring and reporting is part of environmental assessment – it is an enforcement function. This function should remain within the auspices of the Environmental Protection Act (EPA) where the enforcement procedures are already established. Specifically, all conditions emerging from the EA process are already embodied in Certificates of Approval, which are enforced under the EPA. This process does not need changing and any change will, in our opinion, create more confusion not less.

Recommendation No. 32 – Training – Endorsed

Recommendation No. 33 – Cross-Agency EA Review Protocols - Endorsed

Recommendation No. 34 – Consolidated Approvals – Agree in principle but this recommendation requires further discussion and we recommend it be moved to Chapter 4

Recommendation No. 35 – Relationship between EA and EPA - Agree with need to clarify relationship but we disagree with the specific recommendation. Further consultation is required and this recommendation should be moved to Chapter 4

Recommendation No. 36 - Electricity Sector – No comment

Recommendation No. 37 - Transportation Sector – No comment

Recommendation No. 38 - Research Undertaking – Endorsed

Recommendations No. 39 - 41 – Recommendations Requiring Further Consultation – Endorsed

Summary and Conclusion

We have reviewed the Executive Group Report and have presented what we hope are constructive comments on its content. While many aspects of the final draft report to the Minister are based on our recommendations and, in some cases, mirror them, there are also examples where our recommendations have been misconstrued. We all understand that the process was made more difficult by the lack of opportunities for discussion between our members and the Executive Group. Had opportunities been available, it is likely that many of the concerns expressed above could have been resolved through further discussion. In our view, these discussions must take place before the Executive Group's recommendations are adopted. As a result, and unfortunately, we are unable to fully endorse the report. We, and the other members of our Panel, do, however, request continued participation in the future consultative process that is recommended by the Executive Group.

We respectfully request that this letter be included as an Appendix to your final report when it is transmitted to the Minister.

We appreciate the opportunity to have been be involved in this review and truly hope that its outcome will indeed lead to positive improvements to the Ontario Environmental Assessment Process in the near future for the betterment of all Ontarians.

Yours Truly,

Original Signed By

Nigel G. H. Guilford   Janine Ralph   Howard Goldby

CC: Paul Rennick
John Jackson
UsmanValiante

February 10, 2004

Comments on EA Panel Draft Final Report
Submitted by Paul Rennick of the Waste Table

General

The extra time taken by the Executive Panel was well worth the effort. The report is well laid out with key recommendations up front followed by discussion. I suggest that you resist any suggestions to move text to the appendix. It is import that the reader be forced to read the principles and the detailed discussion following each recommendation to appreciate the overall strategy in the advice given by the EA Panel. Some of the recommendations would benefit from the addition of a word here and there to make it perfectly clear what is intended. The cross-reference to the text is good and usually clarifies intention. However, since recommendations often stand on their own, it is best that they be as clear as possible. For instance, the word "independent" should be added to recommendation 6 to make it clear the provincial advisory body in not to be established as an in-house government body.

Specific

Executive Summary

1(j) – Siting itself is not a "goal, objective or value". It needs a qualifier to make it so. After reading the backup discussion, perhaps the principle is "Avoidance First" - through a cooperative siting process.
2 – The term "green projects" needs a clear definition. For instance, would a project that is "economically and politically" expedient be considered "green"?
4 – Again I am concerned for the future interpretation of what is a green project. I fear undo political influence may prevail to grease the skids for politically favoured undertakings that may not be environmentally acceptable. I presume that "green" projects are those that are in the public interest with minimal and manageable impacts.
5 – Should this recommendation include a reference to Federal government such as "in cooperation with the federal government and CEAA"?
6 – Does your recommendation mean an "independent advisory body" as stated in the text?
7 – Does the criteria for sending undertakings to Hearing need revision or just the resolve to do it? I see from recommendation 14 and the text that you are suggesting changes to criteria.
Page 5 – This is excellent. One caution I would point out is that we would not want the EA process to become a "cookie cutter" and that flexibility is needed during the carrying out of the process but not in the rules

Page 7 – Summary of Recommendations

Recommendation 1 – Issue – The issue is much broader. For example, the need for clarity and predictability for all EA undertakings not just "green " projects.
Recommendation 3 – Issue – Same comment as for Executive Summary. I would add that should examine all undertakings subject to specific sector EA and then recommend what should be in and out, and of those in, what is the hierarchy of impacts on the environment. This issues relates to Recommendation 5
Recommendation 10 – Same comment as Executive Summary, i.e. in cooperation with Feds and CEAA
Recommendation 12- This recommendation comes out of frustration that the EAAB is not doing it. If we get clear rules, sector policies and guides as embodied in the report, will we need this level of bureaucracy? My main fear is political influence and "stretching" of what is considered "green". Having said that, I like the idea but it needs careful examination of consequences.
Recommendation 16 – How does this fit with recent Fed/Prov agreement of EA harmonization? Should get Louise Knox, Regional CEAA Director opinion as well.
Recommendation 22 – I would add "policy statements and guidelines".
Recommendation 26 – Monitoring. What is missing here is the fundamental need for a monitoring framework for both compliance monitoring and effectiveness monitoring. An example would be the Cumulative Effects Monitoring Framework for the Niagara Escarpment Plan Area that I was involved in designing and is now being implemented by the NEC. I also have a model monitoring framework that I develop for work carried out in SE Asia under CIDA funding.

Page 21 – last para before Organization of Report – What is the relationship between the proposed EA Advisory Body and the inter-ministerial implementation team? I would suggest that the latter should be represented on the former.

Chapter Three – Key Recommendations

Page 21 – opening para – its not just "green" projects. It's all undertaking subject to EA. As a suggestion, opening para could read "In general terms, the Ontario EA program does not adequately identify, prioritize, expediate or give proper direction to projects subject to EA especially the planning and approval of "green" projects, etc"… I would also add a similar scope to the discussion in text. The waste table was of the view that there is a lack of clear direction across the board for projects subject to EA. And yes, we need a better focus on what's in and what should be out and an easier ride for project that are intended to protect certain features of the environment while causing minimal negative effects on others.
Page 29 – last para before subheading "Purpose of the EA Act" – " and has identified various means by which to more effectively -------- the legislative purpose". Word missing – suggest "achieve"
Page 30 – 33 – discussion of the purpose section – Breaking down into two goals is interesting, however, goal 1 is achieved only by goal 2 and is linked by phrase "by providing for". In other words, "people" are better if we "protect, conserve and manage

wisely the environment (as broadly defined). So people are better off if we have wild bunnies, the economy is better off if we have clean water, etc. So your concluding thoughts on pages 32 to 37 are correct, i.e. have to achieve "goals 1 &2" together. In fact that's how I read the Act from the getgo.

Page 33 – Suggested EA Principles

I agree with these. However, while "project" EA may have a limited sustainability benefit, strategic EA (SEA) and ecosystem-based, integrated strategic planning have far greater ability to achieve sustainability benefits. I suggest the Executive Panel should promote the idea of SEA and integrated ecosystem-based planning and decision-making where appropriate especially when many other jurisdictions worldwide have added SEA to their assessment strategy.
Page 34 – One project, One integrated process – Be careful with this one. How should one interpret "integrate substantive considerations"? There has always been an argument as to the "level of detail and method of analysis" that should occur in EA – too much into design and you have EPA, etc.
Page 35 – Siting – Same comment as before. What this says is that the first line of defense (protection) is to avoid valued ecosystem components and social amenities. Thus perhaps a better principle is Avoidance First – through proper siting.
Page 35 &37 – Sector Policies – The text leads up to recommendation 3, Sector Specific Policy and recommendation 4 Establishment of Sector Working Group and is right on the money.
Page 39- para one – "be" in missing in line 7 bracketed statement
Pages 39-40 – discussion of how policy should be developed. Likewise I take no position on the legality of whether such policy development would be subject to EA. However, carrying this out within the scope of SEA would be doable. The argument that such a SEA would cost more and take longer to develop the policy is irrelevant given the long time we have tried to deal with EA without such a policy and the wasted resources this has caused for all concerned not the least of which - the environment.
Pages 45-47 – Thresholds for Waste Management. I agree with this discussion which captures the report of the waste table.
Page 57-80 - Template as proposed. This approach may have merit but will create controversy as to what project goes into which category. Furthermore, how does one know the benefit/risk up front sufficiently to fill in the chart without doing the EA itself and a "net effects analysis?" It would largely depend on the problem/situation. We do have a good understanding now as to which undertakings are relatively benign and could be removed from EA. All others should have some sort of screening process and then if significant a full EA. The template proposes that the "risk" section would be filled out based on very limited definition of benefit/risk such as "duration and location". Duration is a questionable measure of risk. For instance, a road through a valued ecosystem component such as a provincially significant wetland wipes out the value from the getgo – its duration does not matter. Forcing undertakings into 5 categories may have some merit but will be a very painful road to get there. For instance, since when does the need for a new landfill or a new road not meet the public interest? Our current Minister may have a preference for the 3Rs and good for her but she has not said the therefore a landfill

is not needed. Furthermore what if the provincial policy is an ass? If MOE considers such a template, it should be developed with broad consultation by the advisory body. It may be better to leave EA categories to each Sector and keep provincial general strategy to "steering and less rowing" as stated in your report.

Pages 96-98 – ADR – May understanding is (unless recent changes have taken place in MOE) that ADR training has not been provided to EAAB staff. This may be part of the reason that MOE has not promoted use of same. And ADR is not something that can learned from a book.

Pages 100-102 – Integration – The Executive Panel should also consider the role and scope of SEA. At a minimum, the principles of EA should be built into municipal planning instruments such as OPs, Secondary Plans, Master Plans as well as adopting the PPS.

Page 119 – Monitoring – As noted up front, recommendation 26 lacks the fundamental need for a monitoring framework to be developed for both compliance monitoring and effectiveness monitoring which are very different activities. I have developed a number of monitoring frameworks which could be used as examples such as the Cumulative Effects Monitoring Framework for the Niagara Escarpment Plan and work carried out in SE Asia funded by CIDA. I am also in discussion and have participated in the annual Science Conference sponsored by EMAN – the Ecological Monitoring Network housed in CCIW building in Burlington. The are also other monitoring systems in place in USA and UK which could be examined for application for Ontario EA.

Pages 138-140 – Community Liaison Committees – The Advisory Body in considering this suggestion should review experience to date including work of the Siting Task Force on LowLevel Radioactive Waste Management. Also of note is the Manitoba process to establish a Hazardous Waste Facility, selected USA State LLRW siting exercises and MOE Waste Master Planning process experiences with Public Liaison Committees.

Page 140 – Transportation Master Plan & EA – Should also consider using SEA approach for TMPs

Page 142 – Implementation – This is blank. The Executive Summary captures this quite well by stating key recommendations that should be carried first including the warning not to "cherry pick" from the list of recommendations. Also it is important for the Advisory Body to further assess many of the recommendations with the benefit of broad consultation.

Page 143 – Conclusions – para 2, last sentence – "During this time, the three Sector Tables etc.... They were not active for the 6 month period, only about 2 and a half months.

COMMENTS SUBMITTED BY THE PUBLIC

Mr. Blair Rohaly
Ministry of Environment

November 11, 2004

Re: Comments on the Issues, Discussion and Proposals for Improvements to Ontario's Environmental Assessment Process for the Waste Management Sector

From: Gracia Janes, Environment Convener, St. Catharines& District Council of Women

Dear Mr. Rohaly,

Thank you for inviting me to comment on Issues, Discussion and Proposals for Improvements to Ontario's Environmental Assessment Process for the Waste Management Sector. As the Environment Convener for the St. Catharines and District Council of Women, I have been involved since 2002, in the ongoing meetings and discussions regarding the Niagara/Hamilton Waste Plan, most recently the proposed EA Terms of Reference (TOR.) My comments, as follows, are based on environmental policies developed by the Provincial Council of Women of Ontario (PCWO, est. 1923) the most recent being an update of our 1995 Policy on Waste Management in May 2004.

Overview

Overall, it is important to the St. Catharines and District Council of Women, and the Provincial Council of Women of Ontario, with whom we are affiliated, **that Provincial Environmental Assessments for the waste management sector be in the long term interest of the environment and public health and safety.**

Given the potential for both positive and very negative impacts of waste management projects on all of Ontario's citizens and their environment, **it is very important that the Province articulate a protective overall goal, and an ambitious plan, for progressive, sustainable, waste management.** This plan should be enhanced by strong environmental legislation eg. stronger air quality standards, and the EAA laid out in clear and logical terms, with roles and responsibilities that are easy to understand, and not open to misinterpretation. **Finally, there should be an ability for the public, whose interests the Act serves, to be involved in a meaningful proactive way throughout**

Comments re the Discussion Paper and Proposed Solutions

1.Background:

Given my experience, as Niagara, and then Niagara/Hamilton, worked towards the proposed TOR, the Ministry's three R's, of "Revitalize, Rebalance and Refocus" are very much needed. To date, **this has been a confusing experience, with the municipalities muddling along , using weak and outdated government information and regulations misinterpretation of incomplete information, and , in the case of Niagara at least, less than an open format for committee meetings.** For instance, questions re the science of various proposed gasification/incineration technologies remain unanswered. Instead Niagara referred to a 1995

Provincial discussion paper on dumps and incineration (which used computer simulation to prove they were both not harmful to the environment) and the A7s, which measure concentration rather than quantity, both of which we consider to be inadequate . **It would seem a clear "role" of the proponent to be required to answer these queries with up to date and credible - peer reviewed- information.**

Throughout the first year of the discussions it appeared from comments made by the consultants and the regional staff, that because the government of the day was not insisting on broad public consultations, the region could avoid more detailed public input or objections. In the words of one staff member "*all we might need is a re-zoning for the siting of a facility*" - not an EA. After the change in Government, some prodding from the municipality of Welland, and some advice from the Ministry of Environment, the Region began to refer to the need for bringing the TOR under the Environmental Assessment Act, with the obvious requirements for open public involvement..

Nevertheless, as we commented in our correspondence of May 20th and October 4th , 2004 to the Minister, it appeared that the proponents were not working directly from 6.1.(2) of the EA . As one example (which we note has been repeated in this working document) the order of 6.1.(2) was changed to place "*(ii) the alternative methods of carrying out the undertaking*" ***after*** "*(iii) the alternatives to the undertaking* ". From perusal of a private sector initiative i.e. Walker Brothers draft for discussion re proposal to expand its landfill (15/09/03) it appears that this proponent followed the rules as we interpret them .

It seems clear that had these 'panel" goals been in place a few years ago, and been acted upon, the process in Niagara would have been much better for both the participants and the environment in the long term. Depending on how closely the panels follow their "purpose" we can hope for a truly comprehensive , clear, and open EA process in the future.

11. Statement of Principles

All of the foregoing comments relate directly to the stated "*principles*", which we consider to be excellent. Further to this, we add the following comments.

1. **Provincial policy for waste management** :

An integrated waste management policy is absolutely key to protecting the environment. As noted in the background information to our PCWO 2004 Waste Management Policy "***many jurisdictions world-wide are adopting 'zero waste' strategies, systems and supportive regulations and legislation, in order to conserve energy and resources , reduce waste, create jobs , conserve landfill capacity, enhance 3 R programs and prevent air, water and soil pollution***." It is clear that the holistic, cross -sectoral approach is essential. **Ontario should have the best policy and practices in Canada, instead of lagging behind smaller provinces**

such as Nova Scotia.

2. Clear and Disciplined and 3. Transparent

Our initial comments related to the Niagara TOR apply here.

4. Participatory:

Although PCWO has no policy regarding intervener funding for participants, **it would make sense that for the public to be involved in a meaningful way, that they be able to challenge the proponents of various projects, such as Niagara/Hamilton** . This would require many more hours, and far more expertise than the general public has easily at hand. Our experience in Niagara shows that good scientific information and peer reviewed expertise has not been proffered by the proponent to date. There is information available, but for the purposes of an EA, particularly, where the environment can suffer considerable lasting negative impacts, **experts are needed to fully explore the proposal in the public interest.**

5. Based on Good Data, Sound Science and Sound Engineering

It is crucial that good data, sound science and sound engineering be the underlying principle of the EA. For instance, regarding the issue of the "*new technologies*", significant scientific concerns have been raised about the problematic outcomes from "*combustion*"technologies eg. the disposal of fly ash and stack gas emissions eg. fine particulate matter, mercury and dioxins. (Incineration & Human Health-State of Knowledge of the Impacts of Incineration on Human Health- Greenpeace
Research, Manchester University 2001.

Again, it is key that the Provincial policy "*be based on good science and full information*", a factor that was almost completely lacking in the above noted Niagara experience.

111 Specific Issues, Discussions and Proposals

Issue 1: The Lack of Provincial Policy for Waste Management

The discussion fails to suggest an overall provincial policy regarding long term provincial protection of the environment, and public health and safety, with respect to its waste management policy, and instead focuses on an integrated waste management strategy **The former should underpin the actual strategy. This in turn will ensure the success of a strong provincial policy, supportive of the " *overall intent of the .Environmental Assessment Act, which is to protect the environment through good planning and decision making in the province*."**

The solution and discussion also unduly stress the functional aspect of a waste strategy rather than the reason/need of a visionary goal and integrated plan, along with strong supportive legislation to prevent environmental damage eg. as per previous comments , strong air quality standards .

For instance, in the discussion, **there is a focus on *"appropriate size and capacity of facilities that must be created to manage waste,*" rather than a possibility of adopting a system that would reduce the need for so many facilities . If the province were to chose a strong goal that the reduction of wastes to avoid disposal as much as possible, i.e. zero waste vis a vis Nova Scotia, then the focus would dramatically change. Overall, Ontario must have the strongest legislative protections and processes in place to make sure its handling of wastes over the long term is environmentally sound and sustainable.**

Issue 4. Lack of Clarity of the Terms of Reference Procedures

As noted in our previous comments, there is considerable confusion regarding the requirements under the Act, particularly Section 6.1.(2) (b) (i), (ii)or (iii) its order, and meaning. It appears that this section and the word "reasonable" were incorrectly interpreted by Niagara consultants and staff. **The word "reasonable " does not appear in this section , and was used to foreclose any examination of a " zero waste" system - as it was determined to be " unreasonable"- and focus on new combustion technologies**. The fact that other jurisdictions aim towards such a goal and build their systems around it held no weight with the proponents. While it may be a common practice for Ministry staff and proponents to use the term "reasonable" in relation to the above mentioned section , there still is no rationale under the Act. As for the order of Section 6.1 (2) it seemed that the Region used it to "scope" the EA ToR as we noted in our submission to the Ministry of June 20th 2004. Again, it is noteworthy that Walker Brothers used the order as per the reading of the Act. In the proposed solution to issue 4, this mis-order order of 6.1 (2) is repeated, and the word "reasonable " is used , which begs the question as to where these (changes/addition) are found in the act and/or why they are used?

Given the Niagara/Hamilton experience , it certainly is important for the Ministry to "finalize the Guide to preparing Terms of Reference documents , and to reconsider the use of the term "reasonable" if proponents are going to use it to preclude methods/systems that are in use elsewhere, in order to pursue a "scoped" proposal.

As an addendum to this issue, I note that Nova Scotia has passed a ban on compostables in landfills, as part of its Provincial goal of pursuing a "zero waste" system, whereas Niagara has included compostables as part of the waste to be disposed of - i.e. the problem to be solved by some kind of "facility".

Issue 6.: Barriers to Public Participation in the Environmental Assessment Process

As discussed in the introduction, there should be meaningful citizen involvement in the EA process. Since all waste projects have the potential for negative environmental, or health and safety impacts, it seems reasonable that some funding be in place so that the project can be "tested" through and comprehensive, cohesive involvement of the potentially affected parties.

and expert scrutiny. It is also in the interest of the public, that all aspects of the development of a ToR be completely open to scrutiny and questioning by the public. **In Niagara this was not the case**; for as we noted our May 20th 04 brief to the Ministry, not only were our questions re the science of the new technologies not answered and the meetings " controlled" , but we were considered as "*threats* " to achieving the energy from waste solution e.g. Draft ToR "Threats"-" ***demands for more information than is made available."***

Conclusion

Finally, Council of Women urges the Ministry of Environment to protect the environment and the health and safety of the public through the development of strong government goals, legislation and policies as well as a waste management plan that ensures a clear rules, a transparent process , the use of good science, and meaningful public involvement throughout

TO: *The Waste Management Panel, EA Expert Review*

FROM: *Rhonda Hustler, Warwick Watford Landfill Committee*
rhustler@hotmail.com
Tele: 416-944-0185
98 Borden St.
Toronto, Ontario
N0M 2S0

DATE: *November 12, 2004*

BACKGROUND

Since 1988, I have been an active member of the WWLC and have participated in all stages of Waste Management's proposal to expand the Warwick landfill. For more detailed comments on WM's EA at Warwick, please visit our website at wwlc.net

Waste Management Workshop

November 5, 2004
Gallery Room, Ontario Heritage Centre
8 Adelaide St. East
8:30 a.m. to 2:30 p.m.

Issues, Discussion and Proposals for Improvements to Ontario's Environmental Assessment Process for the Waste Management Sector

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The Waste Management Panel has invited you to this workshop to discuss what is working and what needs to be improved with respect to Environmental Assessment planning and decision making related to waste management in Ontario. The intention of the workshop is to explore the issues that the Panel has identified, and other issues that you may wish to raise, and to develop recommendations to the Minister of the Environment on improvements to the process.

To assist in the workshop discussions, the Panel would like you to consider the key issues put forward in this paper. The paper has three sections: I) background that briefly describes the establishment of the Panel and its task, II) the overarching principles that the Waste Management Panel used to guide their discussions, and III) a description of the issues and the Panel's proposed solutions.

I. Background

Environment Minister Hon. Leona Dombrowsky appointed an advisory panel and three sector panels on waste management, cleaner energy and transportation and transit to provide "expert advice and guidance on improvements to Ontario's Environmental Assessment process" to support the "…government's waste diversion and waste management, clean energy and transportation objectives".

The stated purpose of these panels is to meet the government's goals to:

1. "**Revitalize** the EA program, providing clear, prescriptive rules for appropriate environmental planning and decision-making;
2. **Rebalance** EA decision-making by setting out clear roles for all participants; and,
3. **Refocus** the EA process such that the level of assessment and review of proposed undertakings reflects the potential that proposals have to positively or negatively impact the environment as defined by the Environmental Assessment Act*Envi*."

Further details were provided including terms of reference for the panel and sector panels and a "statement of challenge". The Waste Management Panel has met on 6 occasions, including their first meeting on September 28. Each sector panel is scheduled to report their findings and recommendations to the advisory panel by November 19. The advisory panel will deliver a final report to the Minister of Environment by December 31, 2004.

II. Statement of Principles

Consistent with the government's objectives, the waste management panel has developed a set of principles to help frame the discussion of issues and guide the development of recommendations.

These principles include:

1. **Provincial policy for waste management** – An integrated waste management policy for the province should be developed to establish a framework for waste management activities, and provide a basis on which to judge the need and appropriateness of proposed waste management undertakings. The policy would be based on good science and full information.

2. **Clear and Disciplined** – The process should be clear and disciplined. Clarity of application of existing legislation and approvals processes is essential to effective environmental assessment. This applies to the Environmental Assessment Act, the Environmental Protection Act and certificates of approval for the waste management sector. The principle of a clear and disciplined process would include efficiency and timeliness.

3. **Transparent** – The environmental assessment process should be transparent and enable proponents, reviewers and the public to understand the environmental assessment process and to follow projects through the stages of government review and approvals.

4. **Participatory** – The environmental assessment process should include opportunities and resources for participation by all potentially affected parties.

5. **Based on Good Data, Good Science and Sound Engineering** – All elements of the process should be based on the best information available, and sound scientific and engineering practices.

III. Specific Issues, Discussion and Proposals

These are the key issues that the Panel has identified, grouped under the four guiding principles, and followed by a description of the issue and the proposed solutions:

1. Principle #1 – A Provincial Waste Management Policy

Issue 1: The Lack of a Provincial Policy for Waste Management

Discussion:

There is currently no overarching provincial policy for waste management. The province should have a waste management policy that includes all elements of an integrated waste management system and recognizes the inter-relationship of those elements. This would help streamline the environmental process by identifying the province's need for different types of waste management activities and the appropriate size and capacity of the facilities that must be created to manage waste. Issues such as rationale, alternatives, and the public interest need to be clearly articulated in provincial policy so that sound public policy forms the basis for evaluating waste management proposals under the environmental assessment process. The policy should also reflect the differences in available resources and infrastructure needs between northern and southern Ontario, and between urban and rural areas. This would help to achieve the intent of the Environmental Assessment Act, which is to protect the environment through good planning and decision making in the province.

Proposed Solution to Issue 1:

1. That the province develop an integrated waste management policy for Ontario that results in a statement of need for, and interrelationship among all elements of waste management within Ontario. These would include collection, transfer, re-use and recycling, other forms of waste diversion and all forms of disposal. This policy should be based on a dependable database, updated regularly, that includes:

- estimates of waste currently being generated
- the sources of waste and their disposition,
- estimates of capacity to handle those wastes,
- projections of changes in waste quantities and estimates of future needs, and
- a statement of goals, measurable targets and timelines.

This could be created through a strategic Environmental Assessment, undertaken by the province.

COMMENT:
An integrated waste management policy is essential for a coherent, responsible, and equitable system of managing waste. Such a policy would

- ***regard waste management as a public utility (for example, water, electricity)***
- ***include objectives to unify local, regional and provincial strategies***

- ***ensure adequate funding from industry and the provincial government to meet the goals set out in the provincial strategy***

- ***recognize the economic and environmental accountability of primary waste generators - industries, manufacturers, and commercial businesses***

- ***oversee capacity studies done by independent waste auditors (not associated with industry or the government***
  Disposal capacity figures provided by waste companies can be rather bizarre. At Warwick, for example, the site opened in 1971 with 15 years capacity; 25 years later, the site had 11 years capacity remaining; in 2001, WM reported 11 years capacity remaining; now WM claims the site "is almost full." The site has never reached its maximum annual capacity of 56,000 tonnes of MSW.

- ***include regulatory framework with clear incentives and penalties, not simply guidelines and goals***

2. **Principle #2 – Clear and Disciplined**

Issue 2. Lack of proper criteria for deciding which waste management projects should be subject to the Environmental Assessment Act and which projects should be subject to the Environmental Protection Act

Discussion:

Historically, criteria have been developed in a piecemeal fashion to decide which waste management undertakings are subject to the requirements of the Environmental Assessment Act and require examination of alternatives and effects on the environment and which ones require primarily technical scrutiny under the Environmental Protection Act. For example, some administrative changes to landfill sites that do not have major environmental impacts must still undergo a full environmental assessment. A clearer, more rational process is needed – a process that allows projects with no significant environmental impacts to be exempted from the environmental assessment process and ensures that projects likely to have the most significant impacts are thoroughly evaluated. The scale and extent of project assessment, review and approval should reflect the nature and extent of the potential negative and positive impacts of a project.

Proposed solutions to Issue 2:

1. That the Environmental Protection Act (Sections 30 and 32) and the Environmental Assessment Act be applied to projects in such a way that projects ranging from those with the least impact (such as transfer stations) to those projects with the greatest impact (such as landfills and incinerators) are subjected to the appropriate level of assessment and review, using these two Acts. The waste management panel has developed a chart with categories that suggests how this might be done (**Appendix I** of this paper).

Additional questions for discussion:
When would a hearing under the Environmental Protection Act be appropriate? When would a hearing under the Environmental Assessment Act be appropriate?

COMMENT:

- ***The proposed solution sounds effective except that the criteria would need to be carefully constructed since transfer stations, for example, might pose the same kinds of social and environmental problems associated with landfill.***

- ***For example, a transfer station will introduce more traffic, more noise, emissions, and disruption to the community. Even when the proposal happens to be on the more positive side of the garbage issue - waste diversion/reduction – the impacts need to be assessed.***

Issue 3. The lack of resources within the Environmental Assessment and Approvals Branch to support both the application of the Environmental Assessment Act and technical reviews under the Environmental Protection Act.

Discussion: It is recognized by both proponents of waste management undertakings and the public that the Ministry of Environment lacks sufficient resources to fully support the application of the Environmental Assessment Act and technical reviews of proposals submitted under the Environmental Protection Act. Because of staff turnover and a diminishing level of support during the last decade, EA undertakings are likely to have a number of different staff assigned to the project. This has slowed down the approvals process, and even simple applications may take many months to resolve.

As the majority of EA and EPA approvals are given without hearings, it is difficult for the public to be confident that operational and technical concerns have been adequately addressed. Proponents for approved undertakings often find that they are issued with Certificates of Approval within which many conditions are satisfied in the first few years of operation. Other conditions, however, need to be updated on an ongoing basis and this is currently done through piecemeal amendments.

Proposed Solution to Issue 3:

1. That the Province devote additional resources to the Environmental Assessment and Approvals Branch (EAAB), in order to ensure that the Environmental Assessment Act and Environmental Protection Act approvals processes are supported by the technical expertise expected by proponents and the public

COMMENT:

- ***Without question the diminished resources and staff at the MOE have negatively affected the EA process, but the larger problem is the staff's mandate and basic knowledge.***

Ten years ago, the Ministry still had staff with an institutional memory of the Ministry's fundamental purpose, policies, and procedures. Since the mid 1990s, that institutional memory has been systematically erased, placing MOE staff at a serious disadvantage when working with experienced community groups and senior waste management executives and consultants.

- ***Increased resources and staff are essential, and they must have a mandate to actually participate in an EA.***

The Warwick EA is a case in point. The regional MOE staff who occasionally attended our EA meetings told us at the outset of the TOR that they were forbidden to make statements or answer any questions; they were restricted to writing down our questions and sending them back to the Ministry in Toronto.

Similarly, our EA person in Toronto has never been to Warwick during the TOR or EA process. When I had serious concerns about WM's public consultation process at Warwick, I telephoned and emailed our EA person who was attentive but unable to act. The process, she explained, was entirely WM's and the Ministry could do nothing until the EA was completed. . We should, however, keep notes and send them on to her.

- ***The government should increase staff and ensure consistency on an EA file, and***
- ***Give MOE staff the responsibility and the mandate to actually protect the public's interest in an EA.***

2. An EA application (filing) fee required by the Ministry of Environment to accompany an application should be commensurate with the complexity of the review and the funds directed to the EAAB to finance the review process. What kind of fee would be appropriate?

COMMENT:

- ***The fee for service model is useful for implementing and operating programs (Blue Box, diversion, education) but not necessarily a good choice when it comes to the review of the EA.***
- ***If it were used by the EA branch, the Ministry would need to consistently emphasize that the fee does not make the proponent a client of the ministry.***

- ***The fee for service model poses some possible difficulties. When Health Canada (Drug Approvals Branch) began charging pharmaceutical companies a fee to cover the processing costs of drug submissions and approval, many observers saw a new and troubling relationship: drug companies saw themselves as "clients" paying for a government service with all the incumbent expectations of a customer- business relationship. Some argue that this business relationship pressures Health Canada unfairly to accelerate the approval process for their "customers." It is possible that similar expectations could arise if the waste companies "paid" for an EA service and placed "business" expectations on the Ministry during the EA process.***

- ***Unlike other Ministry fee-for -service practices, the EA branch has long-term relationships with the proponents, often months and years, which could complicate a fee-for-service system***

- ***Alternatively, the MOE could require waste companies to donate a percentage of the undertaking's costs and anticipated earnings to environmental NGOS, charities, and organizations.***

3. That the Province considers the issuance of Certificates of Approval (C of A) that would allow for periodic review and updates of C of A is to ensure consistency with current regulations and standards. The review would include an opportunity for public comment but would not constitute a re-application nor trigger a public hearing.

Additional Questions for discussion: What kind of time limitation/review period should be set for C of A reviews – 5 years, 7 years, 10 years? What should the C of A review and public comment mechanisms be like?

COMMENT:

The time limits seem reasonable but the review could also be triggered by

- ***Municipal council concerns about site operations***
- ***MOE inspection reports identifying unresolved issues***
- ***inadequate MOE inspection (MOE must have mandatory inspection schedules with inspection criteria)***
- ***PLC concerns about unresolved or delayed resolution of outstanding issues***
- ***community and neighbour complaints to MOE that indicate failure to comply with CofA***
- ***any changes or amendments to the CofA that change the hours of operation, waste stream, service area, traffic route and vehicles, leachate management system, and waste diversion, especially construction/demotion and composting operations***

The C of A review should include

- ***forensic review of site operation, MOE inspection records, D&O compliance record***
- ***waste stream studies (sources and generators)***
- ***assessment of diversion success (meeting provincial targets)***
- ***assessment of leachate management system and gas emissions***
- ***compliance with community commitments agreement and financial assurances***

Public review mechanism should include

- ***records of all MOE and site operation records open to the public***
- ***posting notice on EBR, local newspapers and radio***
- ***municipal council and PLC notification***
- ***public meetings***
- ***proponent's funding of document review, legal and technical experts for municipality and PLC and other identified community group and organization***

Issue 4. Lack of clarity of the terms of reference procedures ("scoping") for municipal and private sector proponents with respect to purpose, rationale and "alternatives to" matters in the environmental assessment process

Discussion:
There are significant differences in the methods by which the provisions of the EAA are applied to public versus private sector undertakings.

Public sector proponents are expected to:

- provide a rationale for each proposed undertaking that primarily reflects public policy decisions and not necessarily an appropriate 'business case'; often this involves revisiting municipal public policy and an expectation that the rationale will account for changes in Provincial or Federal public policy over which a municipality has no control;
- examine an extensive set of 'reasonable' "alternatives to" with very few alternatives being eliminated at the outset in their EA Terms of Reference from consideration through screening processes;
- examine a wide range of 'alternative methods' including facility siting exercises to find the 'best' facility location, regardless of the feasibility of acquiring the property because of the expectation that municipalities will use their powers to expropriate land if necessary.

Private Sector proponents:

- base their rationale on the 'business case' for the undertaking, but are often criticized for not taking into account public policy;
- are expected to examine 'alternatives to' that may often lie outside of their scope of expertise and knowledge as a company,
- are constrained in terms of the range of 'alternative methods' that can be reasonably considered, although they are also expected to find the 'best' facility location.

The environmental assessment process should take into account the reasonableness of considering certain alternatives for proponents.

Proposed solution to Issue 4:

1. That the Ministry of Environment develop a Terms of Reference regulation that sets out the reasonable functional 'alternatives to' and 'alternative methods' along with other provisions that would be required to be addressed by small scale versus large scale public sector undertakings, and that sets out the basis for rationale, reasonable functional 'alternatives to' and 'alternative methods' along with other provisions that should be addressed by private sector undertakings.

2. That the Ministry of Environment finalize the Guide to Preparing Terms of Reference documents, and develop new policies/guides to support the proposed regulatory change including better guidance on public participation in approvals processes.

COMMENT:

Private Sector Proponents:

If waste management is considered a public utility and the private sector wants to be a partner in this public utility, then it should be required to adhere to public policy.
The TOR must establish the proponent's need based on public policy, and alternative methods must include achieving the province's waste diversion goals and objectives, the same as those for the public sector.

Need:

- ***Basing a proposal on a "business case" skews the EA purpose and process by not taking into account the public interests of an undertaking.***

- ***When the corporate interest replaces public interest, the private sector scopes the TOR /EA to provide business profits and growth, neither of which may be in the public's best interests.***
  For example, WM's landfill expansion proposal at Warwick and Richmond is driven, according to WM, by a demand for corporate growth at 6%. WM was not required to establish need in terms of good public policy even though their business may well negatively affect public policy.

Alternatives:

If the public sector is required to examine alternatives using public money, then the private sector should be required to examine alternatives using private money; it must meet the standards of good public policy and study all the alternatives.

From my experience with WM and before that Laidlaw, the private sector has an infinite number of consultants, experts, and lawyers who can minimize every concern, solve every problem, and answer every question to make the expansion happen. Their collective expertise and imagination are nothing short of staggering. I can't imagine any alternative that would lie outside their scope of expertise. After all, WM offers us national and international expertise, state-of-the art operations, unparalleled experience, and knowledge on all waste management issues, so studying alternatives of any sort should be easy for WM. If community volunteers and municipalities can find

experts to study broad alternatives, so can waste companies. They are, after all , in the business of waste management.

- ***Proponents of any undertaking – public or private – must be able to demonstrate that they have done their homework, due diligence, in preparing the proposal - need and alternatives in the broadest public context. Without comprehensive study and consideration, the proposal lacks sound planning and responsible decision-making. The study of alternatives is really part of the needs study: is the undertaking needed at all? A critical alternative must be not doing the undertaking at all.***

Best facility:

- ***, the private sector, like the public sector, must consider alternative sites as part of the alternatives. While the proponent cannot logically consider other sites owned and operated by competing waste companies, a company such as WM can certainly consider facilities they themselves own and operate.***
  In the Warwick and Richmond cases, WM simply moved ahead with two identical proposals without any site selection process, proposing to expand both sites simultaneously. At the very least, the Ministry should have required WM to consider the impacts of both sites on the province as a whole (both ask for province-wide service areas); the TORs and the EAs should have been set against provincial policies and public interest and been treated as one EA.

- ***It is entirely reasonable that private sector proponents consider need, alternatives and site selection because the proposals***

  - ***extend well beyond municipal or regional boundaries and typically service the entire province***

  - ***develop disposal capacity far greater than those proposed by municipal/regional governments***

  - ***serve a population far greater then any one region or combined municipalities***
  - ***involve long-distance hauling and transportation***

  - ***profit from public money***

  - ***affect public policy on diversion and conservation***

Guide to Preparing Terms of Reference

- ***The Ministry should establish policies rather than guidelines to enforce regulatory changes. The current guidelines are ineffective at protecting the interests of the public in general and site communities in particular. The current process presents significant hurdles for the public because the process is effectively controlled by the proponent, not the Ministry. .***

- ***Primary conflicts arise because the public participation process is designed and implemented by the proponent. Key problems arise in timing, scheduling, review time, incomplete documents, and fragmented studies.***

- ***The proponent scopes the TOR to exclude need, alternative to, and site selection and makes way for an expedited EA.***

3. Principle #3 – Transparent

Issue 5: Lack of transparency in the Ministry of Environment's process

Discussion:

There is a problem for proponents and the public in acquiring information on the status of projects undergoing environmental assessment and the projected time frames for completing the process.

Proposed solutions to Issue 5:

1. That there needs to be an improvement in the 'one window' approach used by the Ministry for the public and the proponent. When an undertaking subject to an environmental assessment is proposed, one staff person in the Ministry should be designated to follow the file and to respond to proponent and public inquiries.

2. That the timelines set out currently for Ministry approvals of the EA Terms of Reference and EA submissions be reviewed, and that reasonable, but clearly defined, timelines be determined for different parts of the environmental assessment process.

Additional Questions for discussion: What are the appropriate timelines for environmental assessment? How should they be enforced and what should the penalties be?

COMMENT:

- ***The one window approach may be useful but, the Ministry's response and participation are critically important, too. In our experience at Warwick, the Ministry was passive and non-participatory when we expressed our serious concerns about the Warwick TOR. The proponent controlled the process with the Ministry sitting on the sidelines. The Ministry must be active and accountable.***

- ***The Ministry staff should articulate and enforce the government's strategic plan and overarching waste management policy on reduction and diversion. Anything less, means the government's policies are subsumed by the private sector and public confidence in the process and the government is eroded.***

- *Timelines for review need to reflect the complexity of the proposal. From our experience, the timeless are too short, the expectations too high. The proponent sets the agenda for the community meetings and document reviews.*
- *The Ministry needs to support the volunteer community by negotiating realistic timelines for public review and consultation. The timelines should not be driven by the proponent's schedule but should reflect the complexity of the undertaking and the documents; timelines should be extended when documents are incomplete or inaccurate and when the public raises concerns about the consultation process itself.*

The timelines should

- *Reflect the complexity, size, duration, and provincial impact of the undertaking.*
- *Set a minimum, not maximum, timeframe for consultation; it's reasonable that an undertaking lasting at least 25 years should take a proportionate length of time for review.*
- *establish explicit criteria for each phase of the TOR and the EA (not guidelines or recommendations)*

Enforcement:
The Ministry would

- *Assess each phase of the EA to ensure that the criteria had been met, and the penalty would be simply that the proponent corrects the process to meet the standard.*
- *Consult the community for comment, and outstanding issues would have to be resolved before the proponent could continue to the next phase.*

4. Principle #4 - Participatory

Issue 6: Barriers to public participation in environmental assessment process

Discussion:

Public participation is an important element of the environmental decision-making process. Yet, there is no direction in the Ministry of Environment guidelines with respect to the level of participation that is appropriate, if there should be participant funding and how it should be applied. This leaves the development of consultation plans and determination of the need for participant funding to the discretion of proponents. There is a need for the Ministry of Environment to articulate clear rules for participation and to define when it would be appropriate for proponents to provide financial assistance to participants.

Proposed solution to Issue 6:

1. That the Ministry of Environment develop clear guidelines for the type, form and level of public participation. These guidelines should be developed in consultation with the audience for whom they are intended.

2. That there should be provisions within the environmental assessment program for resources for participation.

Additional questions for discussion: What, when and how should participant funding be used? At what point in the process is funding important and effective? Who should determine the level of participant funding and who should receive it?

COMMENT:

Guidelines:

- ***Guidelines alone are useless when dealing with the private sector. If the government values public participation, it will develop specific, legally binding rules and regulations, minimum standards and penalties.***

- ***Community volunteers spend vast amounts of time negotiating and monitoring the consultation process, requesting reasonable timelines, complete, accurate documents, and a logical, equitable process. Guidelines do not work and to improve the process, the Ministry must have rules and regulations.***

Funding:

- ***Communities cannot participate equally or meaningfully without resources, specifically financial support. The private sector may fund the municipality but not the community group even though the interests of the two bodies are not the same.***

- ***The funding should come from the proponent to the Ministry which would award the money to the local community group participating in the process, the Environmental Assessment group established to review the documents, and the municipality; in large scale proposals with a provincial or national context, provincial groups could be funded as well if working with the local community directly.***

- ***The funding should be based proportionately on the size of the project and the scale of the operation within the community. Approximately 25% of the proponent's undertaking costs /and profit expectations should be set-aside for the public participation groups.***
- ***The funding should be available at the same time the proponent announces the plan, before any documents are written or distributed. It is unrealistic to expect the public to catch up with a process launched months before the first public meeting.***

Appendix I: The proposed EAA and EPA approvals requirements

Type of Proposal	Section 30 of EPA / EAA triggered	Section 32 of EPA
Establishment of a Landfill or Thermal Processing Site	**Yes** - regulations under subsection 6 (2) (b) of the EAA to proscribe EA Terms of Reference requirements for scale of public sector undertaking and private sector undertakings	**No**
Enlargement of a Landfill or Thermal Processing Site	**Depending on scale of undertaking** - regulations under subsection 6 (2) (b) of the EAA to proscribe EA Terms of Reference requirements	**Depending on Scale of Undertaking** - includes ability for public to request EPA hearing
Application to alter or extend the life of a Landfill or Thermal Processing site including amendments to EAA conditions	**No**	**Yes** – includes ability for public to request EPA hearing
Transfer Facility	**No**	**Yes** - Regulation under the EPA to set out public consultation provisions, siting provisions and design and operation provisions
Processing (Biological or Physical/Mechanical)	**No**	**Yes** - includes ability for public to request EPA hearing - Regulation under the EPA to set out public consultation provisions, siting provisions and design and operation provisions
Research Scale / Demonstration Facilities	**No**	**Yes** - includes ability for public to request EPA hearing - should include time limitation on C of A

Note: Amending the EPA to provide the ability for the public to request an EPA hearing would replace the current situation where the public requests a 'bump up' to an Environmental Assessment.

Rohaly, Blair (ENE)

From: Jim Annand [jannand@thomsonmetals.com]
Sent: Friday, November 05, 2004 9:33 AM
To: Rohaly, Blair (ENE)
Subject: RE: Workshop Discussion

Blair, I would like to thank you for sending the attachment of information. I believe the Waste Management Panel have put forth valid concerns and I also feel that the proposals are sound and legitimate. A very important process that must result in a clear, user friendly method of approaching sustainable solutions to Ontario's waste management needs. Specifically, I would like to see progress made in the area of the burning of "biowaste" especially as a fuel. To tackle this with today's EAA would be insurmountable. A clear, well defined process is needed before the private sector will spend investment capital to develop this dynamic area of waste management. I look forward with anticipation to the results of these important sessions.
Thanks, Jim Annand.

> -----Original Message-----
> **From:** Blair.Rohaly@ene.gov.on.ca [mailto:Blair.Rohaly@ene.gov.on.ca]
> **Sent:** Thursday, November 04, 2004 10:25 AM
> **To:** rmpower@ppc.org; bobm@greenlanegroup.com; jannand@thomsonmetals.com
> **Subject:** FW: Workshop Discussion
>
> **Subject:** Workshop Discussion
>
> Good morning,
>
> Attached for your review and comments is the document that will be discussed at the Waste Sector Table workshop in which you declined attendance. Please provide comments to Blair Rohaly, Project Manager, Ministry of the Environment, 135 St. Clair Avenue West, 11th Floor, Toronto, ON M4V 1P5, by November 12, 2004.
>
> Thank you in advance for your assistance on this important initiative.
>
> Blair

Rohaly, Blair (ENE)

From: Paul Filteau [pfilteau@shaw.ca]
Sent: Tuesday, October 26, 2004 3:40 PM
To: Rohaly, Blair (ENE)
Subject: EA Board & intervenor funding

Greetings Blair:
I would be interested in these provisions. The present Synfuel process drags on and on with both sides lobbying politically rather than focussing on the technical, environmental and social impacts, need a definite hearing period:

1. the provison for an EA Board with 5 representatives, 3 having local knowledge

2. adequate intervenor funding provided by the sponsor of a project to be administered by the EA branch with no administrative fee to be made available to intervenor groups

3. no scoping should be allowed

4. less reliance on computer modelling, translate results to lay language, verification of modelling with real life experiments

Thanks for considering these remarks
Paul Filteau
536 Black Bay Road
Thunder Bay, On P7A 1P8
Phone: (807)683-6298

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GENERATION

700 University Avenue, Toronto, Ontario M5G 1X6

Cara L. Clairman
Assistant General Counsel, Law and
Executive Director, Sustainable Development
Tel: 416-592-4921 Fax: 416-592-1466
c.clairman@opg.com

November 12, 2004

Mr. Blair.Rohaly
Project Manager
Ministry of the Environment
135 St. Clair Avenue West, 11th Floor
Toronto, ON .
By E-mail: Blair.Rohaly@ene.gov.on.ca

Dear Mr. Rohaly:

Thank you for providing us with the opportunity to comment on Ontario's EA process. We understand that you are seeking input on how to improve the environmental assessment regime of Ontario in order to ensure fair, balanced, comprehensive, transparent, accessible, inclusive and participatory environmental planning and decision-making for all undertakings governed by the Environmental Assessment Act, resulting in outcomes that maximize sustainability. In general, OPG supports the processes established for electricity sector projects. However, we agree that more can be done to further improve and streamline the process. We are hopeful that the following comments will assist you in achieving your goals.

Comments Regarding the Administration of EAs by EAAB

- For each proposed project, we recommend that there be one MOE EAAB staff and one Senior Manager designated as contacts for the project, including EA approval; permitting, and any other environmental approvals relating to the project, such as those required under Reg. 153/04 (pertaining to Brownfield redevelopment work such as SSRA and RSCs). The provincial permitting process needs to be streamlined and linked to the EA approvals people and procedures/process;
- It would be helpful if EAAB could provide greater education to all parties, especially the public, with respect to elevation requests. There needs to be more guidance provided on procedures for with dealing with form letters, the validity of elevation requests, and what happens to requests received after the 30 day review period;

Ministry of Environment

- There needs to be some level of cooperation/coordination/ harmonization between municipal approvals and Provincial approvals; namely site plan approvals, and in the case of Toronto, the opportunity for further 'bump ups' At the end of the day, the municipal level can create a serious bottleneck; and
- We continue to support harmonization with the Federal EA process to ensure projects are not subject to multiple EAs.

Comments Regarding the "Guide to Electricity Projects"

- In our view, the timelines in the 'Guide' can be misleading to the public. Our experience has been that members of the public often believe that the proponent is dragging out the process, when in fact the proponent is also waiting for a decision from the MOE. It would be helpful if the MOE would be more explicit with the public regarding its timelines;
- It is difficult to get any certainty regarding the process or definitive timelines where we are operating under a guideline. A "guideline", by its very definition, does not have the force of law which requires certain due process or timelines to be followed (thus creating uncertainty for a proponent or stakeholders).
- The Ministry staff has a great deal of discretion regarding scope of study and stakeholder consultation. This leads to a lack of certainty for the proponent. This discretion means that the MOE can potentially continue to ask for more information with no clear end in sight. There needs to be more clarity around when enough is enough. A similar problem exists with respect to stakeholder consultation requirements, in that it is not clear when you have discharged your obligation to consult.
- Some processes are not delineated with any specificity in the Guide. For example, "technical review" or "consultation" are not defined for purposes of preparation of an Addendum (B.5.2), accordingly, the level of effort required of a proponent in order to satisfy the Guide is entirely dependant upon the particular MOE staff person with carriage of the file at the time.
- Discretion with respect to timelines is also problematic. For example, section B.4.1.2 indicates the Minister "will make a decision on a [bump-up] request within 45 calendar days", having said that, the Guide then goes on to state "There may be instances where the Minister is not able to make a decision within 45 days… Where this is the case, the Minister's decision will not be considered invalid on the ground that the decision was made after the 45-day period." It is difficult for proponents to plan projects with this kind of uncertainty around the timeline.
- More work needs to be done to educate the public on the contents of the Guide versus the old EA regime. For example, many members of the public believe that there is intervener funding and that all EA material should be posted on the EBR. They do not fully understand the full EA versus the individual EA, and its relationship to the Environmental Review Report.
- There is a belief that the EA work undertaken under the "Guide" is not legitimate, even though it can involve as much study and consultation as an individual EA.

Comments Regarding O. Reg. 116

- OPG endorses the submission made by the Ontario Waterpower Association regarding EA thresholds.
- Under the current definition of "significant modifications", which focuses on name plate capacity, an energy efficiency project at a coal-fired plant could be subject to a full EA, as it is possible for such a project to increase name plate capacity but decrease air emissions (or at least keep air emissions the same). In our view, energy efficiency projects that do not increase air emissions but increase name plate capacity should be exempt from EA.
- There is no recognition of the concept of a "blended fuel source" in the Regulation or Guide. For example, if a blend of oil and natural gas is proposed, it is not clear what qualifies as the "primary power source" in the Regulation, which defines primary power source as "the primary power source used by the facility to generate electricity…") with no reference to a percentage composition. A more explicit definition would be helpful.

Thank you again for this opportunity to provide our comments. We would be happy to discuss our comments with you in more detail. Please feel free to contact me at your convenience.

Yours truly,

Cara L. Clairman
Assistant General Counsel, Law and
Executive Director, Sustainable Development

c: Adèle Malo

M.K. INCE AND ASSOCIATES
WIND ENERGY ENGINEERING

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November 11, 2004

Dear Mr. Rohaly,

Thank you very much for the opportunity to participate in the Energy Sector Stakeholder Workshop on Improvements on Environmental Assessment Processes in Ontario. The day was interesting and informative, as well as presenting an appreciated opportunity to be a part of the process. I am writing to provide some comments on the EA process in order to underline some ideas which were discussed mainly in the plenary after the break-out group discussions.

First of all, it is fundamental that all EA processes to which projects are subject (provincial, federal and other), are completely harmonized in requirements, processes and final reporting structures. Provincial EA requirements should inherently consider federal requirements such that no separate federal process would be needed. Streamlining the process within the provincial requirements would also be beneficial; this would entail better communication between different MOE branches requiring intervention in the project, and a comprehensive check list, or 'road map' outlining possible steps and requirements various projects are subject to. For example, if a certain project undergoing environmental assessment also requires a Certificate of Approval for air emissions, than this should be noted within the guidelines, and the approval could be integrated somehow into the entire process.

Secondly there was much discussion on how project proponents can better reach the public, essentially to avoid last minute requests for elevation. We suggest that the MOE:

- improves existing tools or implements new tools to help project proponents better reach the public; specifically making the EBR higher profile, or a household name, such that members of the public are intrinsically aware of the registry, and if they are so inclined, can more easily access and understand it – essentially, advertise the EBR to the public and put a responsibility on the public to become informed.
- considers an increase in the 30-day review period to allow more members of the public to be reached.
- works with Canada Post to allow EA related mailings to be exempt for the Consumer's Choice program (which allows households to choose or not to receive unaddressed mail), as are other mailings related to government, elections, etc.

Thirdly, there is currently an exemption to the EA process of projects proposing new technologies or technologies not recognized within the documentation. These projects should automatically be subject to the EA process, rather than being exempt.

Fourth, on a specific note, we have concerns with different projects and structures being subject to different studies and requirements, perhaps related to 'pigeonholing' certain types of projects as causing certain effects. Specifically, wind energy projects are thought to be destroyers of entire bird populations and are thus subject to rigorous bird studies, whereas high buildings and towers generally kill more birds, but are not subject to the same considerations. Consistency in EA requirements for all projects should be worked towards with improvements to the EA process.

Finally, there was some mention of a redistribution of financial responsibilities within the process, making the proponent responsible for certain items and the governing bodies responsible for other items. Please keep in mind as you consider this aspect of the EA process, that some proponents, including within the energy sector specifically, are community groups, non-profits or smaller scale organizations who would find the burden of additional financial responsibilities to be prohibitive to their efforts. As advocates for community ownership, this point is important to M.K. Ince and Associates.

Thank you again for providing the opportunity for stakeholders in the energy sector to have input into improving the EA process. Please do not hesitate to contact me at the above phone number or at heather@aeolianenergy.ca should you have any questions regarding my comments. I look forward to hearing more about the direction of Ontario's EA process.

Sincerely,
M.K. INCE & ASSOCIATES

Heather Davidson, P.Eng

Rohaly, Blair (ENE)

From: Prier, Peter [pprier@stantec.com]
Sent: Friday, November 12, 2004 3:02 PM
To: Rohaly, Blair (ENE)
Cc: awhite@energyontario.ca; Fitchko, Jerry
Subject: Expert Panel on EA Workshop Recommendations

Hello Blair, thanks for the opportunity to participate in the workshop. The following outlines my recommendations.

Firstly, 4 hours is not enough time to adequately discuss the diversity of issues related to EA, raised by the range of stakeholders at the workshop. However, based on our experience with Regulation 116/01 and the associated Guide, proponents are generally satisfied with the process and consequently feel that it needs only minor improvements. In other words, it aint broke so don't "fix" it, it only needs some relatively minor improvements.

Secondly, improvements to the EA process only address one aspect of permitting a new Generating Station. I recommend a one window approach to the approval process whereby approvals required under the Planning Act, the OEB Act the EA Act, the Environmental Protection Act, the Ontario Water Resources Act and other legislation are administered and coordinated by one government contact point that is aware of the status of each approval and ensures there is no overlap or duplication and a consistent schedule is maintained.

A few specific recommendations are as follows:

1/Under the Regulation, Section1(1), definition of significant modifications, (e) "a change in name plate capacity of 5MW" for a natural gas fired Station, and (j), (ii), "a change in right of way" for the electrical transmission line, require going through the Environmental Screening Process again (see page 11 of the Guide). These definitions should be changed to: a change in name plate capacity of 25% and a change in right of way that affects a new landowner.

The rationale for these changes are: for name plate capacity, technological advances in turbine design between the start of the permitting process and detailed design can easily change the capacity of a large Station (ie, 800MW) by 5MW and chances are, emissions are the same or reduced and there are no other changes in the outward appearance/footprint of the facility. We recommend changing the 5MW to a 25% increase in name plate capacity, which is consistent with requirements for a hydroelectric Station. For a change in transmission line right of way, it is not uncommon that during detailed design, the landowner or a site specific feature causes slight shifting of the ROW boundaries. I recommend that if there is a change in ROW boundary, agreed to by the landowner, it should not be considered a significant modification. This will result in less time delay in project development and uncertainty in project approval.

2/Public consultation is a fundamental and essential component of EA decision making. Most proponents will do everything possible in terms of using every consultation technique available, to flush out concerns early in the process and modify designs or plans to resolve issues/concerns. It is in the best interests of a developer to adopt a comprehensive consultation approach to increase certainty in the approval timing and have the support of stakeholders throughout the planning, construction and operation of the facility. If a developer has implemented a comprehensive consultation program, they should not be held ransom by an individual that comes into the process at the eleventh hour and wants to delay or stop the project because they either have another agenda or are looking for financial compensation. It has been very frustrating trying to resolve an environmental concern when it later becomes apparent that it was just a smokescreen for financial compensation. My recommendation is that the Request to Elevate/Bump-up a project must be more definitive about what is "frivolous and vexatious" Secondly, in terms of the schedule to decide whether to accept or deny the request, the Director's option to order mediation or additional studies, must have time limits on completion of either option.

These are my recommendations for improvements to Regulation 116/01 and the Guide. Thank you for the opportunity to participate in the process and I look forward to future opportunities to improve the EA process.

Peter

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Chris LaForest, MCIP Director

Energy Sector Advisory Panel
c/o Blair Rohaly
Ministry of the Environment
Toronto, ON.

RE: Improvements to Ontario's Environmental Assessment Process – Energy Sector

Dear Mr. Rohaly,

The following comments are to be reviewed in the context of wind power generation projects only and are not to be considered as the position of the Council of the County of Bruce.

In general we agree with the comment that the current process under the Ontario Electricity Projects Regulation (116/01) and the accompanying Guide to Environmental Assessment Requirements for Electricity Facilities is not seriously flawed. There are some minor adjustments that could be made to the overall EA review process but not specifically to the Regulation.

1. We agree with the Principles as outlined in Section 2.3 of the October 29th Background Report.

2. Threshold levels for requiring an Environmental Screening Report are generally suitable. We are however generally more interested in the number of turbines in a project as opposed to the generating power of an installation.

3. Staff and related local agencies have concerns regarding the degree of/lack of MOE peer review of the quality and recommendations of an Environmental Review. The Reviews vary widely in quality and degree of rigour. Funding from the proponents should be made available to provide for third-party peer reviews of technical documents if such a review has not been conducted by a non-partisan government agency.

4. It is recommended that the Screening Criteria Checklist be completed with input from agencies and other commenting bodies prior to work commencing. This would ensure that the proponent has covered off all areas of potential impact.

5. Additional guidance on acceptable methodologies for reviewing potential environmental impact would be beneficial especially in areas covering socio-economic and heritage and cultural issues.

6. Any changes made should not affect a local decision making body from determining if a wind energy project as proposed is suitable.

7. There is already a relationship between environmental assessment and environmental approval processes for energy projects and requirements under other legislation (e.g., Environmental Protection Act, Ontario Water Resources Act, *Planning Act, Public Lands Act, Ontario Energy Board Act*). The government should look for efficiencies in dealing with decisions/appeals required under multiple Acts/Regulations provided that the requirement for local government approval continues to be respected where required.

8. We would support a multi-step process (including discrete notification, review, screening, reporting, assessment and consultation) for Category A projects also.

9. We would support a "road map" or "check-list" of approvals required for wind energy projects.

10. The question of "frivolous and vexatious" has been a component of the Planning Act for years. The assistance of the Ontario Municipal Board should be sought in this matter.

E-Mail: bcplsmith@brucecounty.on.ca Web Site: www.brucecounty.on.ca

11. There should there be a single elevation request to the Minister accompanied by a recommendation from the Director.

12. There are opportunities for better coordination or integration of multiple elevation and appeal processes (e.g., under the *Environmental Assessment Act* and the *Planning Act*).

13. The use of a joint review Board/Tribunal, each with their unique viewpoint and mandates is preferable to a single body being designated to mediate, arbitrate or otherwise resolve disputes and manage appeal processes

14. Transparency and disclosure of pertinent information is crucial to public acceptance. All documents related to a proposal should be available on the internet. There are multiple examples of this type of disclosure in other jurisdictions.

If you have any questions or require clarification please contact me at your convenience.

Yours truly,

David M. Smith
Senior Planner
County of Bruce

c.c. Director, Planning and Economic Development

To: Blair.Rohaly@ene.gov.on.ca

Ref: Energy Sector EA Stakeholder Comments

Hi Blair:

Thank you again for the opportunity to participate in the Energy Sector Stakeholder Workshop on Improvements on Environmental Assessment (EA) Processes in Ontario. I found the exchange among participants to be unreserved, expressive and far-ranging. Moreover, the workshop afforded me the chance to present some of my clients' experiences with the EA process in Ontario, particularly with respect to O. Reg. 116/01. As you may be aware, this experience has been documented in a Working Paper under development by myself as principal author for the Ontario Energy Association with inputs from a number of Energy Sector proponents on their experiences with the EA process.

The written comments presented below provide detailed case studies on the experience of two proponents attempting to obtain environmental approvals and permits under O. Reg. 116/01 of the Ontario *Environmental Assessment Act* (EAA) (Case Studies 1 and 2), as well as recommendations for improving the EA and approvals process for energy projects in Ontario based on this experience.

Case Study 1

A proposed power plant sought environmental approvals under the Environmental Review stage of the Environmental Screening Process under O. Reg. 116/01. A Notice of Completion of the Environmental Review Report (including the results of the EA and consultation, and impact management commitments) was published initiating the 30-day public and agency review. During Environmental Review Report preparation (over a period of about one year), there were two changes in MOE staff overseeing the proposed project file. Yet another change in MOE staff overseeing the file was made after Notice of Environmental Review Report Completion.

A total of 121 requests for elevation were received, including 103 identical form letters signed by different individuals and 18 original letters. Of the 18 original letters, 11 were from the public, four were from municipal councilors, one was from the local MPP, and two from municipal agencies. Of these 121 requests, 28 were received by the MOE but not the proponent, and eight were received by the proponent and not the MOE. All of the challenges put forward in these requests for elevation had been addressed in the Environmental Review Report or were considered extraneous to the Environmental Screening Process.

The request for elevation from one municipal agency was based on a concern for additional emissions to an already degraded air shed. This concern was advocated despite the fact that no measurable increase in ambient concentrations of SO_2, CO, SPM and PM_{10} would be experienced, and the predicted NO_x emission rates would be below the provincial air emission requirements.

The other municipal request for elevation was based on a concern for noise at the proposed facility property line, despite the fact that the predicted sound levels were below regulatory requirements based on existing receptors. The municipal agency requested additional noise mitigation to reflect the potential for any future residential development adjacent to the proposed facility property. This request was made despite current industrial zoning of the adjacent lands and the lack of any specific details about where this future development would occur.

The MOE provides no specific guidance on how to deal with form letters. For this case, the challenges presented in the form letters were primarily generic or extraneous associated with air quality, ancillary transmission/cogeneration projects, alternative and existing generation facilities, and public consultation. Rather than respond to each of 103 individuals, the MOE requested that the proponent provide a response to the MOE and the MOE would in turn respond to the form letters.

Similar primarily generic or unrelated challenges were presented in the requests for elevation from 11 members of the public, the four municipal councilors and the one local MPP. In this case, the proponent responded to each of the 16 original letters.

Recognizing that all challenges must be addressed in a responsible and technically sound manner, it is a serious matter for a proponent to receive a request for elevation from a government agency. Obviously, the proponent would undertake every effort to resolve the issue. The MOE provides no guidance on how to deal with an agency that expresses concerns where all environmental regulatory requirements have already been met.

Moreover, the MOE provides no guidance to a proponent attempting to negotiate a solution when an agency has its own agenda, is in no hurry to resolve matters, and uses the process to negotiate commitments for its own purpose or that are unreasonable. In these situations, the proponent is at a severe disadvantage in the negotiation process. The MOE guidelines do state that: "*Requests which are clearly made with the intent of delaying a project are frivolous or vexatious or which contain insufficient information may be denied by the Director of the EAAB*", but the terms "frivolous" and "vexatious" are not clearly defined nor is there specific guidance on how the Director will determine which requests are frivolous or vexatious.

As indicated above, the request for elevation from one municipal office was based on perceived air quality and health effects. During initial discussions, additional information was requested on any incremental reduction in NO_x levels that might be achieved using Selective Catalytic Reduction rather than the proposed Dry Low NO_x technology, which was provided by the proponent. During further discussions, the agency recommended the implementation of an ambient air quality monitoring program to which the proponent agreed despite the modeling results indicating no measurable effect on air quality. Moreover, the proponent was reminded frequently that the agency had no deadline to drive towards a timely resolution of this issue, and that the agency was prepared to continue their request for project elevation should the proponent not agree to their recommendation. Subsequently, rather than the monitoring program, the agency requested the proponent to contribute a substantial amount of money to be used as part of a municipal community emissions reduction program.

The other municipal agency adamantly requested a commitment from the proponent that was beyond the regulatory requirements, and insisted that this commitment be formalized within a regulatory instrument, despite pre-consultation discussions with the MOE that specified clearly that unspecified future development would not have to be addressed in the Certificate-of-Approval (C-of-A) application. As indicated above, this request was based on some indeterminate future development. This commitment would necessitate the incorporation of mitigative technology at significant additional cost ($15 to 18 million) just in case residential development occurred adjacent to the proposed facility property in the future. In fact, any such development would have to overcome significant impediments in order to proceed, e.g., zoning, land acquisition, contaminated soil/groundwater remediation, etc.

In both instances, the proponent has four choices:

1. Continue to negotiate over an indeterminable period of time in the hope of obtaining a reasonable outcome;
2. Agree, at whatever cost and/or regulatory precedence, to the demands of the agencies;
3. Agree to negotiate over a defined time period and if no resolution refer the unresolved matter(s) to the Director of the EAAB for resolution; or
4. After initial consultation with agencies, refer the unresolved matter(s) to the director for resolution immediately with no further negotiation in terms of resolution.

The first choice may be unattainable; the second choice unreasonable and economically detrimental to the project; whereas the third and fourth choices introduce significant regulatory risk.

Assuming that the proponent selected the third option, based on the Environmental Screening Process, when the Director receives request(s) for elevation, the Director will decide within 30 days to do one of the following:

1. Deny the request(s) for elevation and allow the project to proceed;
2. Deny the request(s) for elevation with conditions and allow the project to proceed;
3. Refer the matter to mediation before making a decision;
4. Require the proponent to provide additional information and/or conduct further study before making a decision; or
5. Recommend to the Minister of the Environment that the project be elevated to an individual EA.

Three problems can be deduced from this case study.

First, there was a lack of continuity in MOE staff overseeing the proposed project file. As a result, the proponent had to educate the new staff with respect to the project, previous agency interaction and current project status. While it's understandable that staffing limitations or issues will arise; it is obviously preferable to have systems in place to ensure continuity on a project from commencement through completion.

Second, despite going into the negotiations in good faith, the proponent can be at a distinct disadvantage when the other party knows that the proponent will agree to unreasonable requests as the only means available to facilitate timely resolution of matters and request for elevation withdrawal. For this case study, reconciliation required substantial monetary and precedent-setting regulatory impositions.

Third, there can be a disconnect between the EA process and the approvals process within the MOE. In this case study, the C-of-A applications received favourable preliminary review because the project met all regulatory obligations, and yet there was a potential for project elevation due to perceived (and unsubstantiated) air quality and noise issues brought forward by third parties. There are two separate processes within the MOE EAAB. One process (the EA) is open-ended whereas the other (C-of-A) is dependent upon the closure of the open-ended process. Since the Environmental Screening Process is proponent-driven, it is the obligation of the proponent to somehow endeavour to conjoin these two processes in a timely fashion to obtain a consistent and compatible outcome. Improvements in communications and coordination between the EA Section and Approvals Section staff would help to facilitate an efficient conclusion to the two processes.

This project was, after a substantial delay, subsequently approved with nine conditions by the Director to proceed without elevation to an individual EA. During the public review period of the

Director's Decision, requests were made to have Ministerial Review of the decision. The Director's decision on this project has been recently upheld with additions to two of the nine conditions stipulated in the Director's Decision.. A summary of the extensive conditions for denial of elevation requests and project approval is provided in the Appendix.

Case Study 2

A proposed power plant sought environmental approvals under the Environmental Review stage of the Environmental Screening Process under O. Reg. 116/01. A Notice of Completion of the Environmental Review Report (including the results of the EA and consultation, and impact management commitments) was published initiating the 30-day public and agency review. The proponent did not receive any notification of requests for project elevation within the review period. The proponent was unable to obtain a formal confirmation that the MOE had not received any elevation requests because of the inside workers strike. The proponent waited two days after the review period before submitting a Statement of Completion to the MOE. At that time, having municipal approval and having satisfied the published requirements of the process, the proponent initiated site preparation and piling, in preparation for foundation construction work. The proponent was unaware that a request for project elevation had been mailed to the MOE and had not been retrieved from the mail room. A copy of the elevation request was not sent to the proponent, as required. The proponent had satisfied all of the requirements of the published process.

The request for elevation came from a local environmental group represented by an individual who was opposed to any new development in the community. His opposition was determined during the public consultation process and a meeting was set up with him to discuss any opportunities for resolution of his position with regard to the proposed facility. Unfortunately, despite presenting technical data confirming little or no environmental effects, the individual could not be swayed from his immutable opposition. In fact, the individual convinced the Habitat Subcommittee of the local Remedial Action Plan Committee that thermal discharges from the proposed facility would impact fish habitat, as well as used his association with the local university to involve professors to express their concerns with respect to other aquatic effects. This necessitated a technical presentation at the university to convince the Habitat Subcommittee that there would be no impacts on fish habitat and to address the other concerns with respect to other aquatic effects. Our technical data and conclusions were supported by representatives of the Department of Fisheries and Oceans and the local conservation authority who were present at the presentation. Despite this outcome, the local environmental group still mailed the belated request for project elevation.

The MOE determined that construction was initiated prior to denial of the elevation request and the proponent was charged under the Ontario EAA. Rather than being involved in a likely lengthy court battle and incurring the associated high legal costs over the disagreement, the proponent negotiated an administrative penalty and fine.

The Director's decision to deny the request for elevation was subsequently appealed by the local environmental group to the Minister of the Environment within the 15-day window of opportunity (plus a 5-day mailing window beyond the 15 days), with the Minister's decision to deny the request provided within the 45-day review period.

Two problems can be deduced from this case study. First, there is a discontinuity between receipt of an elevation request and determination of its actual existence within the 30-day review period. The guidelines state that: *"A request to elevate a project must be submitted to the Director of the EAAB and a copy sent to the proponent within the 30-day review period after the*

Notice of Completion of a Screening Report or Environmental Review Report has been issued." There is no guidance as to whether an elevation request mailed during but received after the 30-day period is valid. There is no guidance whether an elevation request is valid when a copy is not sent to the proponent.

The second problem is that one individual or group with immutable opposition to a project can use the EA process in an attempt to stall or undermine its approval. The guidelines provide that the Director may request additional information from the proponent for review over an indeterminate time, depending on the extent and detail of response required and then another possible 30 days after information receipt for the Director's decision. Subsequent to the Director's denial of request for elevation, a request was made to the Minister for review of the Director's decision. For this case study, final denial of the elevation request by the Minister was provided 121 days after submission of the Statement of Completion. Even where concerns are frivolous and vexatious, this case demonstrates that a person opposing a project, for whatever reason, can create risks and delays and increase the cost to a project. In this case, the project had the endorsement of federal and provincial government agencies, the local conservation authority, the municipality, other interested parties and the public. Despite this, the project was delayed resulting in additional project carrying costs, direct costs and schedule impacts.

Recommendations for O. Reg. 116/01 EA Process Improvement

As opined by a number of workshop participants, the Environmental Screening Process under O. Reg. 116/01 provides a practical and commonsense approach for EA of energy sector projects. However, as expressed by some of these and other participants and as evidenced by the case studies, the potential for successive bump-ups from a Category B Screening stage to an Environmental Review stage and then up to a Category C individual EA creates significant risks for proponents due to unpredictable and costly delays and additional project costs. As a result, the strategy of some proponents with projects subject to the Environmental Screening Process has been to undertake many of the studies and activities to meet the requirements of an Environmental Review and, in some cases, the requirements of an individual EA. This begs the question of whether the exemptions granted to projects in categories A or B have any practical value, both in terms of limiting the scope of or streamlining regulatory requirements, or reducing the cost and time requirements of approval processes for projects with relatively benign environmental impacts.

Even assuming that a proponent initiates the Environmental Screening Process at the Environmental Review stage, the review and approvals process could extend for four to six months if there is a request for elevation, i.e., 30-day review after Notice of Completion of the Environmental Review Report; indeterminate time to provide the Director with all requisite information after an elevation request; 30 days for the Director's decision; possibly more indeterminate time to provide the Director with a mediation report or further study findings; possibly another 30 days after receipt of mediation report or further study findings; a 15-day opportunity to appeal to the Minister of the Environment to review the Director's decision (plus a 5-day mailing window beyond the 15 days); and 45 days for the Minister's final decision.

As evidenced by the case studies, the Environmental Screening Process is vulnerable to manipulation by special interest groups or third parties via requests for project elevation and appeals to the Minister of the Environment. The guidelines provide that, where a person or party raises concerns or requests an elevation, the Director may request additional information from the proponent for review over an indeterminate time, depending on the extent and detail of response required.

As indicated above, based on the Environmental Screening Process, when the Director receives a request for elevation, the Director will decide within 30 days to do one of the following:

1. Deny the request for elevation and allow the project to proceed;
2. Deny the request for elevation with conditions and allow the project to proceed;
3. Refer the matter to mediation before making a decision;
4. Require the proponent to provide additional information and/or conduct further study before making a decision; or
5. Recommend to the Minister of the Environment that the project be elevated to an individual EA.

Subsequent to the Director's approval, any person can request that the Minister review the Director's decision.

In the case of three projects, requests for elevation and Minister's review of the Director's decision resulted in delays of four to nine months after the 30-day public review period of the posted final Environmental Review Report.

The extended and indeterminate timelines associated with responding to requests for elevation, and the lack of guidance or definition of the Director's or Minister's considerations in dealing with elevation requests, presents a significant risk to proponents.

The guidelines state that "A request to elevate a project must be submitted to the Director of the EAAB and a copy sent to the proponent within the 30-day review period after the Notice of Completion of a Screening Report or Environmental Review Report has been issued". The guidelines do not deal clearly with the following practical issues experienced by energy project proponents:

1. The validity of an elevation request when it is received by the proponent but not the MOE;
2. The validity of an elevation request when it is received by the MOE but not the proponent;
3. The validity of an elevation request mailed during but received after the 30-day review period.

Proponents recognize the legitimate objectives and purpose of public notification and consultation and strive to address concerns in a responsible and technically sound manner. At the same time, proponents' experience suggests that EA and approvals processes are vulnerable to manipulation by private interests.

As indicated above, one of the case studies received a request for elevation from municipal government agencies. The MOE provides no guidance on how to deal with an agency that expresses concerns where all environmental regulatory requirements have already been met.

Moreover, the MOE provides no guidance to a proponent where a person or agency appears to be manipulating the process to promote its own agenda, to stall or delay a project or otherwise abuse the privileges afforded in the EAA and regulations to leverage commercial concessions or additional considerations that are frivolous, vexatious or commercially unreasonable.

The MOE guidelines state that "*requests which are clearly made with the intent of delaying a project are frivolous or vexatious or which contain insufficient information may be denied by the Director of the EAAB*", but the terms "frivolous" and "vexatious" are not clearly defined nor is there specific guidance on how the Director will determine which requests are frivolous or vexatious.

As indicated above, in the face of this uncertainty, a proponent has four choices:

1. Continue to negotiate over an indeterminable period of time in the hope of obtaining a reasonable outcome;
2. Agree, at whatever cost, to the demands being made;
3. Agree to negotiate over a defined time period after which to refer unresolved matters to the Director of the EAAB for resolution; or
4. To refer the unresolved matters to the Director for resolution immediately with no further negotiation in terms of resolution.

To restate the issues, the first choice may be unattainable; the second choice is unreasonable; the third and fourth choices introduce significant regulatory risks and inevitable delays.

Specific challenges in dealing with elevation requests include:

1. Lack of a clear definition of frivolous and vexatious requests for elevation and legal recourse to deal with them;
2. Lack of a formal mechanism to mitigate the risks, delays and added costs of projects when a person's opposition to a project is frivolous and vexatious;
3. The vulnerability of the process to manipulation by private interests that seek to negotiate concessions or additional (even financial) considerations from a proponent; and
4. Lack of guidance for a proponent to deal with parties requesting project elevation in an attempt to negotiate commitments that go beyond current regulatory requirements.

As indicated in the Guide, in all situations where review under the Environmental Screening Process is required, it is the responsibility of the proponent to ensure that the planning process as set out in the Environmental Screening Process is undertaken. Failure to follow the process outlined in the Environmental Screening Process places the proponent in contravention of the EAA. Offences and penalties are dealt with in Section 38 of the EAA. There are no provisions for penalties to individuals, special interest groups or third parties who undertake requests for project elevation and subsequent appeals of the Director's decision to deny the requests based on frivolous or vexatious reasons, and/or have extortive motivation.

As there is a lack of a clear definition of frivolous and vexatious requests for elevation, direction for dealing with agenda-driven manipulations based on threats to request project elevation and legal recourse to deal with them, I recommend that elevation requests and appeals of the Director's decision to the Minister be abrogated from the Environmental Screening Process. Open-ended processes subject to intervention at numerous decision points increase the risk that projects are vulnerable to unpredictable and uncertain delays and costs.

The three project categories can be retained with perhaps some further rationalization and refinement of Category B thresholds. For example, the MOE had proposed increasing the Category B threshold so that all "clean" electricity projects under 100 MW would be exempt from EA requirements. Fuel types which were considered clean for the purpose of this proposal included landfill gas/biogas, natural gas facilities, natural gas cogeneration, wind turbines and hydroelectric facilities. This would mean that these types of projects less than 100 MW would be in Category A, i.e., not subject to the EAA. These projects would still be subject to C-of-A and other permit applications and approvals. Prior to the promulgation of the O. Reg. 116/01 under the EAA, proposed private sector energy projects were subject to the Environmental Bill of Rights as Class 1 Instruments requiring simple notice and comment through the Environmental Registry System. Despite their designation as Class 1 Instruments, most energy projects had included open houses and/or public meetings as part of the EA and approvals process conforming more to the Class II requirement for enhanced notice and comment. Most proponents also prepared an Environmental Report providing a project description, environmental and socio-economic baseline, an assessment of potential environmental effects and recommended mitigation to minimize or obviate these effects. The Environmental Report was provided to the MOE and other relevant regulatory agencies in support of C-of-A and other permit applications. Requirements for public consultation and an Environmental Report could be stipulated by the MOE within the Guide for Category A energy projects as part of their C-of-A permit applications.

Category B projects would continue to be subject to the Environmental Screening Process and differentiated between a Screening stage and an Environmental Review stage depending upon their potential environmental effects. However, it is recommended that the MOE explicitly designate within the Guide the types of projects that would be governed by the two Category B stages. For example, on-site industrial cogeneration projects or expansions of existing facilities could be subject to the Screening stage, whereas large commercial natural-gas fired combined cycle or cogeneration plants would be subject to the Environmental Review stage. For both stages, the Guide should explicitly indicate the public notices to be issued, level of public participation, regulatory agency consultation requirements, information needs, type of documentation, etc. Once a proponent completes all of the requirements culminating in the posting of a final Screening Report or Environmental Review Report, the report would undergo a 30-day public review. During this time, anyone still opposed to the project has the opportunity to provide their rationale for project opposition to the MOE EAAB and the proponent. If there is no formal opposition, the proponent is considered to have completed the Environmental Screening Process and submits a Statement of Completion to the MOE. The project would proceed subject to any other required approvals. If there is formal opposition, the Director of the EAAB would have 30 days to approve the project with or without conditions, deny approval of the project or may decide to require mediation or further study before making a decision. Within 30 days of receipt of mediation report or further studies, the Director would make a final decision. There would be no appeal mechanism of the Director's decision to the Minister.

These proposed changes to the Environmental Screening Process would provide greater certainty and clarity in the approvals process, provide more reasonable timelines, prevent opportunities for process manipulation, as well as eliminate the potential for abuse of the process for financial gain, for entertaining issues that are not applicable or germane to the project application and opportunities for frivolous and vexatious interventions.

I hope that this is helpful. If you have any questions, please contact me at (905) 858-4424 (ext. 279) or e-mail me at jfitchko@stantec.com. I will be on vacation from 18 to 29 November 2004.

Cheers,

Jerry

Appendix: Summary of Conditions for Denial of Elevation Requests and Project Approval

APPENDIX: SUMMARY OF CONDITIONS FOR DENIAL OF ELEVATION REQUESTS AND PROJECT APPROVAL (CASE STUDY 1)

On 16 July 2004, the Director of the EAAB issued a letter denying the elevation requests with nine conditions for project approval of the Case Study 1 facility as summarized below:

1. Air Quality - EPA

- One-time payment of $400,000 for local air quality improvement activities by community organizations, in lieu of the City of Toronto's requirement for an ambient air monitoring program, as agreed upon with the City of Toronto.

- However, in the event the Director, as defined in the *Environmental Protection Act* (EPA) requires the proponent to conduct an ambient air monitoring program to meet Ministry standards, the proponent shall carry out this program in accordance with the conditions outlined in their C-of-A.

Based on the above, not only does the proponent have to pay the City of Toronto, he is still subject to undertaking an ambient air monitoring program at the discretion of the MOE.

2. Working with Toronto Region Conservation Authority (TRCA)

- Site vegetation clearing before the migratory bird nesting season to avoid potential impacts to migratory birds.

- Continuation of cooperation with the TRCA to address any ecological concerns.

Both conditions were recommended (and therefore agreed to by the proponent) in the Environmental Review Report.

3. Noise - EPA

- In the event of future residential development within the receptor locations, the proponent will use whatever physical or operational noise mitigation measures are required to ensure that noise measured at the five receptor points shown in Figure 3, under normal operating conditions, will not be greater than the higher of ambient noise levels, measured when the facility is not operating, or current MOE Guideline requirements being 45 dBA at night with no tonal penalty up to 50 m in elevation above grade (at the five points). This commitment was agreed to with the Toronto Waterfront Revitalization Corporation.

- In the event that the frequency of noise complaints specific to the facility increase to a level that the Toronto Medical of Health considers it to be a concern, the proponent will provide documentation to the Director of EAAB, indicating the facility's compliance with MOE noise requirements. In the event that the facility is not in compliance with the conditions set out in its C-of-A for Noise, the proponent shall immediately implement mitigation measures in order to comply with MOE requirements. The proponent shall provide a statement to the Director of EAAB, indicating that compliance has been met and that the requirements of this condition have been fulfilled.

As indicated above, although it is unlikely that future residential development will occur adjacent to the facility property, to obviate this risk and meet the noise requirement the proponent will spend $15 to 18 million for likely unnecessary mitigative measures.

4. Continuous Emissions Monitoring - EPA

Continuous Emissions Monitoring for NO_x and CO, as well as flow rate and temperature, was recommended in the Environmental Review Report. This commitment was then included as a condition.

5. *E. coli* and Notification/Testing - OWRA

- Development of an operational protocol, as a requirement of the C-of-A under the *Ontario Water Resources Act*, for the facility's chlorination/dechlorination system that insures reduction of *E. coli* concentrations in the effluent to levels sufficient to prevent closures at Cherry Beach due to operation of the facility. The protocol includes a monitoring program and a mitigation plan (contingency measure) in the event of increased *E. coli* concentrations in the discharge waters during June, July and August.

This condition was imposed despite the proposed implementation of a chlorination-dechlorination system for the once-through cooling water discharge capable of killing *E. coli* and other microorganisms; the provision of historical data indicating no relationship between fecal coliform levels at the discharge outlet and Cherry Beach during R.L. Hearn Generating Station operations; and modelling results that indicated with **no** chlorination/dechlorination *E. coli* levels (peak count of 152/100 mL) at Cherry Beach would exceed the Provincial Water Quality Objective of 100 counts/100 mL for about eight hours only for a worst-case precipitation event (based on 2000 to 2002 data). It should be noted that the source of the *E. coli* is from combined sewer overflows that discharge *E. coli* into the Ship Channel currently during precipitation events. This is a problem outside of the influence of the proponent, not relative to the project process and under long-term plans by the City to be corrected.

6. Shutdown of Facility – OWRA

- In the event that the cooling water discharge temperature from the facility fails to maintain the cooling water temperature within the permitted limits, the proponent shall shutdown plant operation. The proponent would do this despite the condition as the alternative would be to be in non-compliance and face possible charges and related penalties.

7. Community Involvement

- The proponent will undertake further public consultation prior to the facility commencing operation, specifically by hosting public meetings. These meetings shall be held once a month, two months prior to the facility beginning operation.

- The proponent shall host annual public meetings for the first five years of operation. Within 30 days of completion of air quality, water quality and/or noise monitoring reports the proponent will ensure that the public are notified about their completion through the newsletter and/or a web posting and/or at public meetings, and that they will be made available to the public upon request.

- The proponent will create a volunteer community liaison committee (CLC) that may include members of the community, City of Toronto staff and facility representatives within three months of the commencement of construction. A Terms of Reference for the CLC shall be developed within the first month of the creation of the CLC which may set out amongst other activities: consideration of the amount of funding required for the administration of the CLC;

frequency of the meetings; and development of a dispute resolution mechanism for the CLC to resolve concerns.

- The proponent shall ensure that this committee has reasonable access to resources and information.

This condition has the potential for additional (possibly significant) monetary impositions, based on the level community involvement mandated by the condition.

8. Additional Information

- The proponent shall provide additional information pertaining to air quality and impacts to human health to the satisfaction of the Manager of the Technology Standards Section (TSS) of the Standards Development Branch (SDB) of the MOE, prior to obtaining approvals under the EPA and OWRA.

This condition was imposed as the TSS of the SDB raised concerns outside of the comment period. While the proponent agreed with the necessity to address the concerns the question remains as to why it became a condition rather than dealt with in the overall process.

9. Compliance

- The proponent shall prepare an annual Compliance Report which describes compliance with these conditions. The first Compliance Report shall be issued no later than one year following the date of this approval, and on the date that is the anniversary of this approval each year thereafter. The Compliance Report shall cover the previous year to that date. The proponent shall submit this report to the Director of EAAB, for placement on the Public Record. When conditions have been satisfied, the proponent shall indicate as such in the Compliance Report.

- The proponent is required to adhere to all conditions that will be prescribed in C-of-As that the proponent will be required to obtain prior to construction. This condition is redundant as to not follow it would be breaking the law, something the proponent is obliged and committed to do anyway.

On 01 October 2004, the proponent received a letter from the Minister of the Environment supporting the Director's decision to deny requests for project elevation.

Rohaly, Blair (ENE)

From: Adam White [awhite@energyontario.ca]
Sent: Monday, November 15, 2004 1:27 PM
To: Rohaly, Blair (ENE)
Subject: FW: Energy Stakeholder Workshop - November 8

fyi

-----Original Message-----
From: mccormick.bj@HydroOne.com [mailto:mccormick.bj@HydroOne.com]
Sent: November 12, 2004 10:29 AM
To: awhite@energyontario.ca
Cc: steve.dorey@HydroOne.com; roger.glass@HydroOne.com; erhardtm@HydroOne.com
Subject: Energy Stakeholder Workshop - November 8

Adam

Thanks again to you and your fellow panel members for the opportunity to participate at the workshop. It is fair to say that we are supportive of all the key recommendations that were provided at the workshop.

All proponents have a strong interest in greater clarity in process and technical requirements. Hydro One has had great success with the Class EA. This is a mature process that will continue to provide value to Hydro One and other transmission proponents for years to come. The absence of clear criteria under which bump-ups would be granted or rejected is needed. Any efforts to gain greater certainty in process timelines is also welcome.

Since the issuance of the Electricity Projects Reg (and the break-up of Ontario Hydro), there has been considerable uncertainty in the public sector including municipal representatives about the roles and responsibilities of energy sector participants. Expectations are that Hydro One or other proponents can meaningfully evaluate the broad range of generation, transmission demand management options that fell within Ontario Hydro's mandate. With one GTA project, there has been a strong resistance to consider transmission options before other options are brought forward. The fact that Hydro One could not bring forward non-transmission options, is viewed as a weakness in Hydro One's process and is a justification for bump-up to individual EA. Much of this confusion stems from the fact that the Reg and the associated guide are silent on this matter.

We are also expecting to see projects where joint EA and OEB review may be necessary. For example, when measures needed to resolve issues have very high associated costs and rate impacts (for example, demands to bury transmission lines). Under the current process with sequential EA and OEB approvals, there is the potential for conflicting decisions on what is acceptable or who should pay (eg ratepayers of Ontario vs local populations who benefit directly from burying lines). Mechanisms to bring the processes/decision-making together without bumping up Class EA level projects warrant consideration.

Hope this is helpful

Brian

Rohaly, Blair (ENE)

From: David Merriman [dmerriman@macviro.com]
Sent: Monday, November 08, 2004 1:13 PM
To: Rohaly, Blair (ENE)
Subject: RE: Workshop Discussion

Blair
I would like to thank the MOE for providing this opportunity to comment on the important issue of EA reform. One aspect that was not discussed is how other jurisdictions in both Canada and elsewhere handle the difficult task of approving, siting and building waste disposal facilities. Since Nova Scotia and Michigan have landfills and Europe has incinerators and more recently MBT facilities perhaps some important lessons could be learned by examining their approaches to planning and approvals.
Regards
Dave Merriman

> -----Original Message-----
> **From:** Blair.Rohaly@ene.gov.on.ca [mailto:Blair.Rohaly@ene.gov.on.ca]
> **Sent:** Tuesday, November 02, 2004 5:05 PM
> **To:** gkomar@dillon.ca; pparker@hamilton.ca; eric.advokaat@ceaa-acee.gc.ca; pmh@pmhubbard.ca; gemnotre@vianet.ca; derekc@millergroup.ca; dave.gordon@clorox.com; idobrindt@gartnerlee.com; lee.doran@sympatico.ca; pals@becon.org; David Merriman; patricia.johnson@ottawa.ca; rcook@owma.org; andre@laflecheenvironmental.com; Andrew.campbell@york.ca; karenbuck@rogers.com; byer@ecf.utoronto.ca; cchisamore@direct.com; david.walmsley@jacqueswhitford.com; mkelleher@risinternational.com; gpatter@toronto.ca; grathbo@toronto.ca; loates@toronto.ca; rodmuir@sympatico.ca; bforrestal@wsii.ca; dbisch@productmanagementcorp.com; larry@aetincorporated.com; kbechard@wm.com; mcant@tsh.ca; wjackman@contactpsc.com; robertwebb@sympatico.ca; ajon@region.waterloo.on.ca; bevthorpe@sympatico.ca; larry@aetincorporated.com
> **Cc:** nguilford@capitalenvironmental.com; howard.goldby@bficanada.com; valiante@primus.ca; jralph@regional.niagara.on.ca; jjackson@web.ca; prennick@sympatico.ca; anwords@hotmail.com
> **Subject:** Workshop Discussion
>
> Good afternoon,
>
> Thank you for confirming your registration for the Waste Sector Workshop taking place this Friday November 5, 2004. The workshop will be held in the Gallery Room at the Ontario Heritage Centre, located at 8 Adelaide Street East (at Yonge St.) in Toronto, ON. The facility phone number is (416) 314-3585. Workshop registration begins at 8:30am in order for the session to start promtly at 9:00am.
>
> If you have any questions or concerns, please do not hesitate to contact me 416-212-4083.
>
> Blair Rohaly
> Project Manager
> Ministry of the Environment

Ministry of Transportation
Ministère des Transports

Ontario

Policy, Planning and Standards Division
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November 19, 2004

Joan Andrew
Assistant Deputy Minister
Integrated Environmental Planning Division
Ministry of the Environment
135 St. Clair Avenue West, 14th Floor
Toronto, Ontario
M4V 1M2

Dear Ms. ~~Andrew~~ Joan:

Thank you for the opportunity to provide input on the panel's recommendations for transit and transportation as they relate to the review of Ontario's Environmental Assessment process. This ministry fully supports a review of the EA that will result in a transparent, efficient process for transportation and transit planning but that will also ensure that environmental protection is maintained or enhanced.

This review is occurring at a critical time for the government of Ontario, as it embarks on planning for significant growth in population and employment in the Greater Toronto Area and other parts of the province. To prepare to meet this growth, MTO is initiating several major undertakings that will be moving through the EA process. We have just received approval on our terms of reference for the Windsor area border crossing and have submitted a terms of reference for approval for the 407 East project. We are also in the process of developing draft terms of reference for public consultation for the Niagara to GTA Corridor and the GTA-West Corridor. All of these projects are of considerable size and complexity and we will be looking to the Ministry of the Environment to provide support and direction as we move through the various stages of the EA process.

I have attached our response to the recommendations being made by the Transit/Transportation Table. In particular, MTO wishes to raise two issues to the panel's attention. First, that the terms of reference step for an individual EA is no longer necessary, adds delay and duplication to the process, and in our experience has led to confusion and frustration among the public. Second, that certainty be improved in the bump-up request and approval process by building in time frames. MTO has experienced lengthy delays in getting decisions on bump-up requests.

.../2

Made from recovered materials Fait de matériaux recyclés

I would welcome the opportunity to discuss these recommendations further or to provide any further review as the panel would see necessary. Thank you again for inviting the Ministry of Transportation to participate in this important initiative.

Yours sincerely,

Bruce McCuaig
Assistant Deputy Minister

c.c. Blair Rohaly
Catherine Brown
Patricia Boeckner

MTO RESPONSE
EA REVIEW TRANSPORTATION TABLE RECOMMENDATIONS

TOPIC	RECOMMENDATION	MTO RESPONSE
Incorporating Transit into the Class EA System	Rec. 1.1 That transit and related projects be incorporated with the existing Municipal Class Environmental Assessment system within two years Rec 1.2 That pending implementation of 1.1, transit facilities should be included within the list of exemptions under Regulation 334. Rec. 1.3 That the exemption limit be increased significantly from the current $3.5 million limit to $10million for transit projects.	MTO is fully supportive of initiatives to streamline the approval process for transit initiatives and would recommend that Municipalities should have the benefit of a Class EA for transit projects.
Part II Orders, known as Bump Up requests	Rec. 3 That the circumstances under which the MOE would consider there to be sufficient justification to grant a "bump-up" request to be fully documented.	MTO is fully supportive of this recommendation. It is reasonable to require the public to clearly state reasons for a bump up. This ministry has experienced substantial delays in the bump up approval process(currently one project has been outstanding for 5 months).
Scoping and Range of Alternatives in Individual EAs	Rec. 4.1 Establish EA practice guidelines which require proponents to meaningfully consider all reasonable alternative solutions irrespective of their agency/business mandates	MTO is fully supportive of a process that requires the proponent to review all alternatives that are within their mandate. The term "reasonable" is often subjective". A mechanism should be pursued that would require

	Rec. 4.2 Proponents should not be required to devote considerable resources to dealing with unreasonable alternatives Rec 4.3 Preferred alternatives can include hybrid options that provide for a combination of alternatives. Rec. 4.4 In EA's spanning multiple jurisdictions and mandates, multi disciplinary EA teams should be established to professionally consider all alternatives.	multi-proponents to work together on all alternatives i.e. in the case of transportation an obligation upon rail proponents to fully participate in the process.
MOE Technical Reviews	Rec. 8 MOE staff could be encouraged to actively participate in the entire process on more complicated projects to provide support for proponent in terms of process	MTO is fully supportive of this approach and benefited greatly from the full participation of MOE staff on the 407 East project. There should be opportunities pursued to ensure that government priority projects become priorities for all participating and review agencies.

Increase MOE Resourcing of EA Program	Rec 9.1 MOE must become more inclusive in its consultation with all affected stakeholders in all EA processes and should lead the development of clear and consistent EA policies and provide sound EA practice guidance for EAs Rec. 9.2 MOE should establish regular and meaning full communications with respect to current practices, policies and procedures with EA practitioners and proponents. Rec. 9.3 MOE should establish an excellent website to which practitioners can easily refer.	MTO is fully supportive of any initiative to improve communications regarding the EA process.
Meaningful Public participation	Rec. 10 Define minimum public participation thresholds and time frames for individual EAs in a manner that meets local community needs and are reflective of prject complexity.	MTO is served well by the Class EA process that currently defines the minimum level of participation for projects. MTO is not supportive of defining participation thresholds for individual EAs as projects are unique and proponents need flexibility in order to deal with the complexity of the stakeholders and the issues related to each project.
Modifications to the Individual EA Process	Rec. 12 Consideration be given to returning to the former process for individual EAs where the Terms of Reference was not required.	MTO fully supports this recommendation. As we are now committed to a full EA for all projects, the terms of reference is no longer necessary and adds unnecessary delays to the process. The ToR was

		traditionally used to scope a project and is now just a duplication of the EA process.

From: May, Paul [Paul.May@york.ca]
Sent: Monday, November 15, 2004 1:53 PM
To: Rohaly, Blair (ENE)
Subject: RE: Advisory Panel on Improvements to Ontario's Environmental Assessment Process-Transit/Transportation Stakeholder Workshop

Blair,

Following the EA Review Transportation Table Workshop last week, I am sending this email to outline a number of other comments. Overall, I think the Table's recommendations are good, however, there are a few areas where I think they should go further. Here are my additional
comments:

- Recommendation 3 is good, but I think it should be expanded to clarify the roles and responsibilities of all members of the government review agencies. Comments from members of the government review team should then be limited to their mandated jurisdiction. In addition, there needs to be strict adherence to the timelines in the Class EA process in dealing with Part 2 orders.

- In the section on "Responsibility of the Public with respect to Part 2 order requests", there is a good description of the concerns and how to deal with them "A screening, by MOE staff, based on clear and accepted riteria to separate legitimate environmental concerns from frivolous or philosophical opposition, would be advisable". I agree with this statement, however, it should be turned into a firm recommendation.

- 5 "Class" Framework - This is an interesting proposal, but has a number of implications that need to be dealt with. For example, as an IEA effectively becomes Class 5, then there will need to be a different process for dealing with Part 2 orders. In addition, there needs to be ongoing commitment and support from MOE for the Class process. There is often a mis-informed public perception that somehow a Class EA is a sub-standard EA. This misconception needs to be vigorously opposed by MOE by showing very strong support for the Class EA process. In some cases, there may need to be an education effort from MOE to inform the general public of the Class EA process and that it is fully supported by MOE.

- Recommendation 7 - The workgroup that I was part of felt that rather than MOE getting involved in training, that they should provide support to MEA to further develop their training program. In addition, we felt that there was no need for an accreditation process.

- Recommendation 11 - I think that this recommendation should be strengthened so that there is an approval of Master Pan's, so that individual projects that have been recommended in the Master Plan can then proceed to Phases 3 and 4 of the process, without having to go back to need, justification and alternatives to the undertaking.

- Recommendation 12 may not be necessary if we are moving to the 5 Class process.

Thank you for the opportunity to provide these additional comments. I hope that they are not too late to still be considered by the panel.

Paul May
Director, Infrastructure Planning
Transportation & Works Dept.
York Region
905-895-1200,905-764-6345, 1-877-464-9675 x-5029

-----Original Message-----
From: Blair.Rohaly@ene.gov.on.ca [mailto:Blair.Rohaly@ene.gov.on.ca]
Sent: Tuesday, November 02, 2004 2:36 PM
To: Blair.Rohaly@ene.gov.on.ca; lindap@ontarionature.org; gord@torontoenvironment.org; marty.osgn@sympatico.ca; rsmith@environmentaldefence.ca; tcoombs@neptis.org;

Friends of the Rouge Watershed

Jim Robb
Friends of the Rouge Watershed
2259 Meadowvale Road, Scarborough
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October 26, 2004

Ontario Ministry of the Environment
EA and Approvals Branch
2St. Clair Ave. West, Floor 12A
Toronto, ON, M4V 1L5
Fax: 416-314-8452

Re: 407 East Terms of Reference

Dear Government Officials:

The consideration of this TOR should be deferred for several months until provincial initiatives such as the GTA Greenbelt, Smart Growth and Infrastructure Planning have been completed.

The proposed eastern extension of Hwy 407 cuts through some of the finest farmland and greenspace in southern Ontario and it could undermine provincial initiatives to:

- control urban sprawl and promote smart growth;
- protect farmland and greenspace and establish a GTA Greenbelt;
- protect water sources and air quality;
- control provincial spending and rationalize infrastructure costs.

Below please find comments on the Terms of Reference for this EA.

1. Description of Undertaking and Rationale

A determination of whether the proposed highway extension will be a Public Highway, Public Toll Highway or Private Toll Highway must be made at the beginning of the EA process because it fundamentally affects the:

- description of undertaking and the rationale for the undertaking;
- highway traffic predictions, public use, truck use and GTA bypass use;
- number of highway lanes, amount of land needed and environmental effects;
- comparison of the advantages & disadvantages for each alternative;

- benefits and costs to the people of Ontario and the environment;
- justification for expropriation of private land.

Tolling has a significant impact on the public use and benefits associated with a highway. For example, the tolling and privatization of Hwy 407 East Partial significantly reduced the vehicle (- 42.4%) and truck (- 84.3%) traffic estimates from those used to justify the provincial EA approval for a public 10-lane highway (S. 5.9, Highway 407 East Partial Design and Construction Report, SLF, July 1999).

Proposed Remedy: A determination of whether the proposed highway extension will be a Public Highway, Public Toll Highway or Private Toll Highway must be made at the beginning of the process and toll rates need to be assessed throughout the EA process.

2. Comparing a Reasonable Range of "Alternatives to" and "Alternative Methods"

The title of the EA (407 East) reveals a strong bias towards Highways rather than effective transportation. Our current deficiencies in transit and our growing sprawl and traffic gridlock problems have their roots (or should it be routes) in this bias. Previous sections of Hwy 407 were built with Orwellian window-dressing about a "transit corridor". But in reality, the actual undertaking (Hwy 407) made no reasonable steps towards improved public transit. The existing Hwy 407 would have to be redesigned, and its cloverleafs rebuilt at great cost, to accommodate a rail transit line. In addition, as a private for-profit transportation competitor, the Hwy 407 owner could slow or block public transit plans.

The current TOR continues this highway bias by proposing the premature scoping or screening of "alternatives to" the undertaking before a proper assessment of:

- the environment that will be affected, directly or indirectly;
- the direct, indirect and cumulative effects;
- the comparative evaluation of the advantages and disadvantages to the environment of the undertaking, the alternatives methods of carrying out the undertaking and the alternatives to the undertaking;
- the actions necessary to prevent, change, mitigate or remedy adverse effects.

Proposed Remedy: A "full cost accounting" should be done for each "alternative to" (e.g. highway 407 East, rail transit, inter-city bus transit, 401 expansion, existing road expansion, truck to rail conversion, traffic demand management, etc.). The "alternatives to" should be compared and ranked on their costs:

- capital and operation costs per passenger kilometre;
- freight costs per tonne per kilometre;
- CO2 and air pollution emissions per passenger and freight tonne kilometre;
- accident rates and costs per passenger kilometre;

- public health and insurance costs per passenger kilometre;
- water pollution emissions per passenger kilometre; and
- land requirements, etc.

The "full cost" ranking of these alternatives should be used to assess the best mix of "alternatives to" be carried forward within the "preferred alternative" for further assessment of:

- the need, timing, size, location and investment needed for each "alternative to";
- the proportion of demand to be allocated to each alternative;
- if 407 is needed, where and when particular sections are needed, and how many lanes are needed based on ownership and toll rates.

Some of the "alternatives to" which deserve increased representation and reliance within the "combined alternative" include:

- significantly expanding public transit, Go Transit and Intercity bus transit;
- significantly expanding traffic demand (reduction) management;
- work where you live incentives;
- further widening of 401 and tolling of 401 as a traffic demand management measure;
- accelerated upgrading and expansion of other existing east-west roads;
- incentives for tele-commuting and staggered work hours to relieve rush hour;
- steps to significantly curtail truck traffic on Hwy 401 during peak rush hours;
- strong incentives for multiple occupancy vehicles;
- dedicated bus and high occupancy vehicle lanes within existing & planned highways;
- creating a rail bypass for trucks and traffic moving through the GTA.

3. Description of the Environment Affected, Direct and Indirect Environmental Effects and Cumulative Effects

A. Socio-Economic Impacts of Land Acquisition and Expropriation

The proposed Hwy 407 East Completion project and proposed north south links between Highways 401 and 407 cut through more than 50 kilometres of private land. Acquisition and/or expropriation of private land will be required and yet the TOR and the socio-economic work plan both seem to downplay this important issue.

Proposed Remedy: Expropriation is a social and economic impact issue which must be fully addressed within the EA. The expropriation and land acquisition process should be described in the TOR. Full cost accounting of land expropriation (time, injurious affection, disturbance, etc.) must be described and assessed when comparing the environment affected, the environmental effects and the comparative advantages and disadvantages of the undertaking, the "alternatives to" and the "alternative methods".

B. Air quality, public health, greenhouse gas emissions and trans-boundary pollution

Please see Appendix A for air quality comments by government and academic experts with respect to Hwy 407 East Partial. Air quality issues must be fully described, assessed and compared at the "alternatives to" stage in order to:

- protect public health and safety;
- address rising health, scientific and international concerns about air pollution;
- address cumulative effects, Kyoto and climate change; and
- ensure "full cost" accounting is used to compare investments in highway infrastructure to transit investments during the review of "alternatives to" and the choice of the appropriate balance of options in the preferred undertaking.

Proposed Remedy: With respect air quality and public health, the "environment affected" and the "environmental effects, direct and indirect" and the assessment of "alternatives to" and "alternative methods", the TOR should require a thorough description of the:

- smog and air pollution trends within the GTA and Durham;
- climate change, trans-boundary and international agreements and context;
- modern research on air pollution impacts, public health effects and costs;
- modern research on air pollution impacts on the built, farm and natural environment;
- air quality monitoring results for highway 404 and hwy 401;
- a cumulative effects analyses for current provincial 400 series highway proposals;
- affect of proposed 400 series highways in terms of the size of the GTA commuter basin, funnelling effects, induced traffic and pollution;
- calculation and peer review of CO2, ozone, PM10, NOx, SO2 and other air pollutants produced for each of the "alternatives to" in total and per passenger km;
- a peer reviewed comparison of the advantages and disadvantages to air quality and public health for each of the "alternatives to" and "alternative methods";
- a thorough description of the preferred transportation "alternatives to" and "the actions necessary to prevent, change, mitigate or remedy" air pollution effects.

C. Accident Rates and Public Health Risks and Costs

According to an MTO study (1991), vehicle crashes take $9 billion from our economy each year. The evaluation, comparison and choice of "alternatives to"should address the issue of accident rates for highway and non-highway alternatives and associated public health risks and costs per passenger kilometre of travel.

Proposed Remedy: The EA Terms of reference should require: 1 - a description of accident rates, health care costs and damages associated with each of the transportation alternatives; 2. - a comparison of the advantages and disadvantages of each alternative with respect to accidents, damages and public health costs per passenger kilometre; and 3 - a description and evaluation of "the actions necessary to prevent, change, mitigate or remedy" the potential adverse effects to public health and safety.

D. Urban Form and the Cost, Efficiency and Sustainability of Infrastructure

The description of the environment in the EA Act includes the built environment and yet the proposed TOR does not adequately address the affect of the undertaking and its alternatives, directly and indirectly, on urban form, smart growth and the cost, efficiency and sustainability of urban infrastructure. Rural/suburban highways subsidize long-distance commuters who utilize the services and infrastructure of central areas without contributing to the financing of these services through local municipal property taxes. Many USA cities have already found that new highways support suburban sprawl leading to escalating pollution and traffic congestion, unaffordable infrastructure and decay of the urban core.

Proposed Remedy: The TOR needs to be strengthened to: 1 - describe and evaluate the direct and indirect affect of the highway proposal and the "alternatives to" and "alternative methods" on suburban sprawl and the cost and efficiency of associated infrastructure; 2 - compare the advantages and disadvantages to urban form and infrastructure cost and efficiency for each of the alternatives; and 3 - describe, evaluate and choose the preferred undertaking and "the actions necessary to prevent, change, mitigate or remedy" the potential adverse effects of the preferred undertaking with regard to urban form and infrastructure inefficiency.

E. Public EA Review of Plans for Post-Approval Privatization of the Undertaking

According to the 2003 Ontario Government Superbuild website:

Ontario Superbuild in cooperation with the Ministry of Transportation (MTO), has begun the process of developing a new public-private partnership (P3) approach for the delivery of major transportation projects. This will be used for several projects. The first project is the completion of Hwy 407 East to Highway 115/35 (Highway 407 East Completion).

The potential transfer of the undertaking to the private sector raises a number of social, environmental, economic and legal questions that warrant public scrutiny right from the start of the EA process. Any transfer of the EA approval/responsibilities and Hwy construction/operation to the private sector will have serious implications for: 1 - "competing" public sector initiatives (e.g. public investment in transit, roads, highway improvements and traffic demand management); 2 - follow-through on conditions of approval and staging of highway widening over time; and 3 - perceived and real conflicts of interest regarding the promises and incentives the government might offer to attract private investment.

Proposed Remedy: The TOR should include a public EA review of: 1 - the economic viability and public payback/private profit scheme for the existing highway 407; 2 - the benefits/risks to the taxpayer for the existing Hwy 407 agreement; and 3 - the steps necessary to anticipate and avoid adverse economic, legal, environmental and social effects associated with privatization of the proposed Hwy 407 East Completion.

F. Effect on Water Quality, Aquifers and Wells

The proposed description of the affected natural environment and the assessment of effects on the natural environment do not give sufficient attention to watershed and source protection measures outlined in the Walkerton Commission recommendations. Attached please find Appendix B with information on water quality issues and highways.

Proposed Remedy: The TOR should address the need for hydrogeological and hydrological descriptions for the watersheds within the study area of the proposed undertaking. The recommendations of the Walkerton Commission should be reflected in the TOR. Watershed planning, innovative stormwater management, reduced salt use and monitoring of groundwater are actions necessary "to prevent, change, mitigate or remedy" the potential adverse effects of the undertaking with regard to ecosystems, processes and functions.

G. Food-land, Green-space and Sustainable Development

The proposed TOR does not adequately address the requirements of the EA Act to: 1 - describe, evaluate and compare the "direct and indirect" affects on food-land, green-space and sustainable development for the various "alternatives"..

Proposed Remedy: The TOR should address the status of strategic watershed planning and landscape ecology planning within the study area of the proposed undertaking. This strategic planning is one of the actions necessary "to prevent, change, mitigate or remedy" the potential adverse effects of the undertaking with regard to ecological systems, greenspace and foodland. The TOR should address the mitigation of speculation and development pressures on lands surrounding the proposed highway through Zoning Orders or other tools.

5. Alternative Methods

Other sections of Highway 407 have run into delays, law suits and disagreements, because the highway was approved at the conceptual level before the design, mitigation and compensation plans were adequately developed and reviewed. In addition, the province took the unbelievable step of exempting Hwy 407 East partial (Hwy 48 to Brock Road) from important legislation designed to protect water quality and streams, including the:

Ontario Water Resources Act;
Lakes and Rivers Improvement Act; and
Conservation Authorities Act.

With these exemptions, the province undermined the ability of its staff to protect water quality, natural resources and the environment during the design of Hwy 407 East Partial.

Stream and valley corridors were bulldozed and piped to cut costs for the private Hwy 407 consortium. But this cost-cutting won't benefit taxpayers. Severing stream corridors not only harmed fish and wildlife, and created genetic bottlenecks, it also increased deadly collisions between highway traffic and deer trying to get from one side of the highway to the other. Providing regularly spaced highway underpasses to accommodate the safe passage of people and wildlife would reduce injuries and fatalities.

Proposed Remedy: The routes and proposed N-S links between highways 407 and 401 should be re-assessed in light of updated environmental inventories, watershed plans, water budgets and hydrogeological and ecological investigations. No exemptions from provincial legislation should be granted. The study areas should be enlarged for the western sections to ensure flexibility in final route selection. In addition, the designs, mitigation and compensation for all stream, wetland and natural area crossings should require bridging to allow the safe passage of people and wildlife.

6. Coordinating Provincial and Federal EA Processes

The federal government's late involvement in the assessment of Hwy 407 East Partial led to considerable delay and ineffective injection of federal mandates (rail system, fisheries, Kyoto, Navigable Waters, Species at Risk, Migratory Birds, etc) into the consideration of alternatives and the project.

Proposed Remedy: The TOR should pro-actively address the need for federal Fisheries Act and other permits. The province should request that the federal government trigger a comprehensive Canadian Environmental Assessment Act (CEAA) Review now and commit to coordinated federal involvement in the assessment of "alternatives to" and "alternative methods". The provincial EA documents should be circulated to federal government departments such as DFO, Health Canada, Environment Canada and Native Affairs, for comments on federal interests and mandates such as fish habitat, air quality and public health, trans-boundary air, water, fish and wildlife issues, and native land claims, sites and rights.

Conclusion

We are willing to work with the Ontario government and the other interested parties to develop sustainable transportation and development options for the area of the proposed undertaking. We would like to meet with you to discuss our concerns and make progress on this undertaking. We look forward to your positive response to our reasonable requests and remedies.

By responding positively to our proposed remedies to the TOR, the Ontario government can avoid the costly economic, social, ecological and legal effects of a flawed 407 East EA.

We look forward to your positive response to this letter.

Sincerely,

Jim Robb Hon. B.Sc
for the Better Transportation Coalition (416) 431-4556

Appendix A - Air Quality

Hwy 407 East Threatens Air Quality and Public Health

Dr. Pengelly is a professor and an air quality and public health researcher with 40 years experience. After reviewing MTO documents for Hwy 407 East Partial, Dr. Pengelly wrote to the provincial and federal Ministers stating that:

- The proposed eastern extension of Hwy 407 will have significant adverse effects on air quality and public health, particularly in Scarborough, Markham and Pickering;
- The MTO-funded studies make a number of flawed assumptions which lead to a significant under-estimation of the emissions of health-damaging pollutants;
- The air quality standards used by the MTO-studies are out-dated, and as Health Canada notes at pages 46 and 47 of the Screening Report, many recent studies show significant health damage at pollution levels well below the standards used in the MTO-studies.

An August 23, 1999 letter from Environment Canada (Rob Dobos) states that:

> "Expansion of the major highway infrastructure is likely to encourage increased car use and facilitate expansion of suburbs in the region by removing barriers to road travel. These changes in commuting and travel patterns are bound to contribute to the regional air quality problem in the long term".

A September 10, 1999, letter from Health Canada includes the following statements:

> "The [MTO) reports indicate that air quality will be in compliance with all applicable Ontario criteria except PM [10] and ozone. ... PM [10] and ozone are currently the air quality parameters of greatest concern with regards to human health. ... the health effects of ozone are clear and significant, which I am sure the authors know".

> "I am not aware of any situation where road building has delivered improvements in air quality, and it does not serve the assessment to ignore this issue. ... Estimates for the next 20 years that I am familiar with indicate that total fleet emissions will increase, even while the emissions from individual cars decrease, due to the greater number of miles driven. This latter phenomenon is largely driven by the continual building of new roads, thus maintaining a high degree of convenience in the use of personal and commercial vehicles. While I don't necessarily disagree with the fact being discussed, I find the narrowness of the discussion significantly misleading".

Appendix B - Water Quality
Highway Runoff Threatens Fish Habitat, Streams and Well Water

According to an article in Water Science Tech. Volume 39, No. 12, pp. 33-39, 1999, by J. Marselek, Q. Rochfort, B. Brownlee, T. Mayer and M. Servos:

> "Urban stormwater can exhibit acute toxicity and genotoxicity ... The highest frequency of severe toxic responses was found for winter multi-lane divided highway runoff, sampled at the edge of the pavement ... almost 20 percent of multi-lane divided highways were severely toxic" .... [sampled sites included Hwy 401 in Scarborough at the Rouge River and the Burlington Skyway]

According to an other article in Water Quality Resource Journal Canada 2000, Volume 35, no. 4, 781-808, by G.L. Oberts, J. Marselek and M. Viklander:

> "Potentially toxic levels of metals and organic pollutants in urban snowmelt and rainfall runoff have been documented by many researchers". (pp. 801-802)
>
> "The [US EPA Nation wide Urban Runoff] study detected 77 of the [priority] pollutants in runoff, with heavy metals being the most commonly detected group and the most likely group to exert a toxic effect on aquatic or human life, especially copper (Cu), chromium (Cr 6+), lead (Pb) and cadmium (Cd)". (pp. 798-799)
>
> "Cyanides are usually contained in anti-caking additives to road salt and were found in roadside snow in concentrations ranging from 3 to 270 micrograms/litre. Snowmelt releases of cyanides could exceed the US EPA aquatic life protection criteria of 22 micrograms/L for acute toxicity and 5 micrograms/litre for chronic toxicity". (p. 801)

In a letter to the federal Minister of Fisheries, Dr. Ken Howard, states:

> "As a professor of hydrogeology at the University of Toronto with many years research experience relating to road salting issues and groundwater impacts in southern Ontario, I have serious concerns with the manner in which Highway 407 is being "fast-tracked" across the province. ... Our recently published research shows that the proposed extension crosses a region noted for a series of important yet highly susceptible shallow aquifers. These [aquifers] are used for domestic water supply and are seriously threatened by the proposed activity. In addition, research findings show that ... a very significant amount of [the base flow which supports local streams and fisheries] is contributed by recharge entering via unusually permeable tills [soils] closely adjacent to the hwy 407 route". ... Given these recent but important findings, I strongly urge that you subject this extension to a full federal Environmental Assessment and Public Review Panel".

Ontario Smart Growth Network

Ontario organizations working to stop urban sprawl and foster compact, livable communities

c/o The Conservation Council of Ontario, 215 Spadina Ave, Suite 132, Toronto, Ontario M5T 2C7
416-533-1635 smartgrowth@greenontario.org www.greenontario.org/smartgrowth/osgn.html

Mr. Blair Rohaly
Project Manager
Strategic Policy Branch
Ontario Ministry of Environment
135 St Clair Ave W, 11th Floor
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Dear Blair,

On behalf of the Ontario Smart Growth Network (OSGN), thank you for the opportunity to participate in the EA Transportation Table on Wednesday. Although I'm sure my verbal comments were recorded at the session, I would like to reiterate and add to them in this written communication.

To begin, the OSGN represents a growing number of organizations (currently 43) working to

- stop urban sprawl;
- promote sustainable, compact and healthy communities in Ontario;
- support community involvement in planning/EA decisions.

As you know, these goals can be helped or hindered by the EA process (modified or not), especially where transportation infrastructure is concerned. Below are answers to the questions posed at the November 10th meeting as well as some extra comments that are major concerns of the OSGN.

1) Inclusion of Transit Projects in the MCEA

We support the preferential treatment of green transportation infrastructure (including pedestrian and cycling facilities as well as transit ways and facilities) over all car-oriented development be it provincial or municipal. We are optimistic that a new transit class EA will ensure that this happens since investing in transit (and other green transportation infrastructure) is an investment in sustainable communities rather than a drain on the public purse. Car-oriented development undertakings are usually only about traffic flow and have nothing to do with sustainable transportation or context sensitive design (CST).

2) Integration of OPA and EA

The OSGN applauds the recommendations of linking EA more closely with provincial planning policy -- as long as it is done transparently. Other acts/regulations that should be integrated with the EA Act include:

- Development Charges Act
- Municipal Act (incl. Municipal Performance Measurement Program).
- Ontario Regulation 239/02
- Public Transportation and Highway Improvement Act

Whether this is possible or not, the EA Act should be more prescriptive in setting guidelines that re-balance our present car-oriented development. This would include fast tracking EAs that support transit and cycling such as road diets, traffic calming and economic TDM measures. These measures, in turn, would meet our goals of stopping urban sprawl and promoting compact development. It is interesting to note that, in relation to TDM as a solution to traffic congestion in Halton Region, several veteran transportation planning and engineering consulting firms downplayed TDM's potential benefits "given the current legislative environment in Canada (i.e. there is little impetus for TDM specifically created by current federal and provincial legislation)". By incorporating EA with the other legislative instruments listed above, changes in this regard could finally occur.

3) Development of an improved process and aligned criteria to manage Part II Order Requirements

Bump-ups usually occur in Schedule B and C EAs because the proponent has not listened, acknowledged or acted upon public concerns. "Frivolous" requests may well be due to "frivolous" undertakings. That being said, the OSGN is very much opposed to any re-writing of the EA that undermines public participation, especially where fees are concerned. Please see our comments under Question 7 below for further information in this regard.

4) EA Scoping and Alternatives

The OSGN believes that scoping should NOT apply to any car-oriented development projects – there are many green alternatives (transit, cycling, congestion charging, tolls, road diets, traffic calming) that must always be considered. However, if the project is "green" in nature (transit, cycling, congestion charging, tolls, road diets, traffic calming) scoping out car-oriented development as an alternative would be preferred. This will ensure that we effectively use our current road capacity rather than induce more traffic.

We believe that the ToR plays a role in giving the public an opportunity to comment. However, if it is decided that the ToR requirement be removed, at least one extra PIC combined with a 30 day comment period must be provided to the public to ensure that the EA problem statement is analyzed to the best degree possible.

5) Categorization of EA Undertakings on the level of environmental impacts

The OSGN believes that the current EA categorization is sufficient and to change it is to confuse the basic issues. All car-oriented development undertakings will always have long-term impacts and should be treated accordingly. Based on many international studies and our own experience, car-oriented development undertakings to modify traffic flow will have to be remedied within two to four years after completion due to induced travel and increased congestion.

In terms of the current categorization, the OSGN recommends that all Schedule A undertakings be publicly listed by year and TMP planning period for TOTAL cumulative environmental, social and economic effects. Although they are deemed by municipal engineers and planners to have little environmental and social impact, these EAs account for 90% of all projects and are pre-approved by municipalities without public consultation. In 2002, the Environmental Commissioner of Ontario (ECO) conducted a study of Schedule A EAs and concluded that the pre-approval of thousands of public projects is a significant problem due to the lack of opportunity for public input.

6) Enhancement of MOE's role in providing training, etc.

During the Nov. 10 session, practitioners complained about problems in learning and interpreting the EA Act. The OSGN believes that the MOE does not provide adequate training, guidance and consistency for proponents and, especially, for the public. As a non-profit organization, we are sympathetic as to the predicament of the MEA when it comes to capacity to provide EA training. Therefore, we recommend that MOE provide either training or funding to both the MEA and OSGN so they can carry out EA education on MOE's behalf.

As stipulated in Question 7 below, proponents must be taught better consulting methods whereby all EA participants can learn from and with each other (e.g. Action Learning). Training opportunities open to the public and practitioners must be available at prices that are within reach of all attendees. Different course levels must be available in the evening so that all persons can attend. An updated website that provides information in non-technical language to all citizens and proponents must also be created to ensure full understanding.

7) Public Consultation and Alternative Dispute Resolution

The EAA stipulates that public consultation is a "key feature" of the act. It "allows" public and private stakeholders to be involved in the project planning process in order to facilitate better decision making (MEA, 2000: A-54). However, this aspect of the act is in need of a total overhaul so there is true participatory planning and, therefore, a balance of power between proponent and public stakeholders (and between stakeholders themselves). If this is to happen, the process must be proactive, provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.

Part of the current problem is due to the adversarial approach to consultation which satisfies few of the parties involved. This guarantees that uncertainty remains and controversy continues well after projects are completed -- significant issues since EAs then make citizen involvement look like a façade that breeds cynicism and thereby creates more problems than it solves. To avoid this in the future, the OSGN recommends that:

- All proponents invite at least one NGO organization or community group expert to be a paid member of the project team at the commencement of a new EA (including TMPs). The OSGN would be glad to recommend people for this position.

- Intervener funding be provided to selected NGOs and community groups to better articulate their needs and concerns in regards to undertakings. This is especially important to ensure that low income neighbourhoods (who are usually the most impacted by Schedule B and C projects) can participate fully AND be able to request bump-ups at no cost to them. As mentioned above in Question 3, the OSGN is strongly against any fees that the public must pay to request a bump-up.
- the public is notified within one week that a new EA is being undertaken by all print and electronic means available.
- Based on the financial value and complexity of an undertaking, proponents adhere to a set timeline to carry out their initial EA phases so that public stakeholders know when to allocate their own time for responding to relevant reports. The financial level, complexity of the undertaking and size of reports should be used as measures to set the amount of time the public has to respond. Proponents and/or their consultants that do not meet these timelines must pay a financial penalty if the timelines are not met. If the public stakeholders do not meet their deadlines, they lose their chance to have input into the process. However, if new information or legislation emerges during these timelines, both proponent and public are provided with more time to submit reports and comments.
- A list of all private and public stakeholders be listed on EA websites for transparency. The list must include date and time of all "one-on-one" meetings.

8) Other comments

There are several other comments pertaining to language, assumptions, mobility, and accessibility that the OSGN would like to bring to the transportation table's attention.

A) Language

The OSGN is very concerned about the language in EAs themselves (e.g. reports, presentations) and the language in the Transportation Table consultation documents. Since much of the language used was developed in the 1950s and 1960s during the heyday of road building, we recommend that Ontario legislation and practitioners adopt a new non-biased transportation language policy following the same format as has been implemented in the City of West Palm Beach, Florida. The intent is to remove the biases inherent in current transportation language, be more inclusive and move the province in the direction of Smart Growth more quickly.

The City of West Palm Beach has identified and summarized objective language along with the rationale for language changes (See http://userpages.chorus.net/burleigh/issues/improve.html) Examples include the words "improvements", "enhancements", "alternatives", "accidents" and others. One of the most used and most biased word in EAs is "improvements" (scattered through the Transportation Table's document as well). According to the City of West Palm Beach, the word improvement *"is often used when referring to the addition of through lanes, turn lanes, channelization, or other means of increasing motor vehicle capacity and/or speeds. Though these changes may indeed be *improvements* from the perspective of motor vehicle users, they would not be considered *improvements* by other constituents of the City. For example, a resident may not think that adding more lanes in front of the resident's house is an *improvement.* A parent may not think that a channelized right turn lane is an *improvement* on their child's pedestrian* *route to school. By City staff referring to these changes as *improvements,* it indicates that the City is biased in favor of one group at the expense of others. Suggested objective language includes being descriptive (e.g., use through lanes, turn lanes, etc.) or using language such as "modifications" or "changes"."*

During the Nov. 10 meeting itself, the word "reasonable" was bandied about. The OSGN submits that, in the context of EA, what is and isn't "reasonable" must be thoroughly discussed both in terms of bump-up requests as well as infrastructure projects.

B) Accessibility, Mobility and Induced Travel

The OSGN is concerned about the continuing emphasis EA practitioners have implicitly put on mobility rather than accessibility. We believe that, despite predictions of gridlock and congestion, the province and municipalities actually have plenty of road capacity to accommodate its growing population and economy. Experience shows that adding to the road network leads to increasing congestion since the number of car drivers in large urban areas is elastic and will fill expanded roads, usually within two to four years. Known as "induced travel", these changes stimulate entirely new trips and vehicle miles traveled (VMT) while other changes redistribute travel that had existed on other routes. Although many highway proponents recommend road expansions because they cut pollution by reducing the time cars spend idling in gridlock, the fact is that expanded freeways always lead to greater automobile use and increased pollution.

The City of Toronto could be speaking for the entire province when it stated in 2002 that it must "make better use of our roads. In one sense, we already have the roads that we need. The problem is that most of the cars on them are three-quarters empty". So, it is really a matter of how Ontario allocates and prices the 280,000 lane kilometres of space it currently manages rather than building more of them. Asset maintenance, traffic calming, road diets and TDM will foster healthy communities at lower cost than continuing to supply more road infrastructure.

C) Flawed Assumptions

Implicit in road oriented EAs are several flawed assumptions regarding mobility, accessibility, economics and natural resources:

- as individuals buy more cars, government will build more roads to accommodate them. Governments constantly issue press releases stating that billions of dollars are being invested in roads when in fact they cannot keep up with the demand
- the current number of roads, even if they are not expanded, can always accommodate another vehicle
- the car should never be constrained by other cars. If they are constrained, car owners believe that governments are not using tax dollars effectively (which leads back to the assumption that more roads will be built).
- more roads promote economic growth. This harkens back to the 1950s when transportation investments were perceived to have only positive economic impacts. But we now experience negative economic impacts (congestion, environmental degradation, household expense). In-depth studies of wealthy cities have shown that those who have invested heavily in roads over

sustainable alternatives have a gross regional product that is no better than cities with fewer roads and fewer cars

- unlimited oil and other energy supplies at low prices
- unlimited aggregate resources available at low prices

Thanks again for inviting the OSGN to participate in these important EA discussions. Please contact me if you have any questions or require more information. Better still, if we could become party to the Transportation Table's ongoing email traffic, we would be happy to add more information from the public perspective which, as we have mentioned above, is sadly lacking in this process.

Sincerely,

Marty Collier

Marty Collier
Manager, Ontario Smart Growth Network

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http://www.greenontario.org/smartgrowth/osgn.html

November 12, 2004.

Blair Rohaly, Project Manager
Minister's Advisory Panel on Environmental Assessment
in Ontario
Strategic Policy Branch
135 St. Clair Ave. West, 11th Floor
Toronto, Ont. M4V 1P5

Dear Mr. Rohaly:

First, I wish to begin by thanking the Transportation Table for inviting members of the public to attend the workshop on November 10th.

I am in support of the "Statement of Challenge" the Panel Executive has developed. It is important that the panel's work go beyond simply expediting/streamlining the EA process

Most of my EA experience has been with individual transportation EAs, and my comments reflect that.

Consultation

If EA approvals are to result in projects "for the betterment of the people of Ontario", then approaches to stakeholder consultation must change dramatically. At the most basic level – consultation should be a two-stage process. 1.) Proponents must inform the stakeholders about the proposed project, **and** the relevant EA process – i.e. stakeholder education. 2.) Once understanding what is at issue and how the various stages of the EA study will unfold, stakeholders can then prepare to provide input focused, at any particular phase(s) of the EA that is of interest/concern to them.

There is very little guidance on consultation in MoE's draft "Guide for Preparing Terms of Reference for Env. Assessments" Dec.15/2000 – it is basically left to the proponent to address as they see fit. MoE evaluate **if** the proponent consulted, but do not if the consultation was effective, or commensurate with the complexity of the project/magnitude of impacts.

To some degree the number of predetermined consultations outlined by proponents rely on unrealistic EA Study schedules put out by proponents themselves that are rarely, if ever met. E.g. if the EA study is to take two years, the proponent proposes 4 rounds of stakeholder consultation. Unrealistic EA study schedules put undue pressure on proponents and stakeholders, and usually subject the entire project to undue political interference as it is then viewed as being "behind schedule", and often resulting in public cynicism about fairness of the process, and comprehensiveness of assessment.

From my experience, stakeholder consultation is the component of EA studies to which proponents, including government proponents, devote the least time and fewest resources. It tends to be viewed as a hurdle– a requirement of the EA that must be met.

Government proponents often neglect to do something as simple as post the EA study commencement notice on their ministry website, or post ToR summaries on their websites as is required in the MoE "Guide to Preparing Terms of Reference for EAs".-draft-Dec. 15,2000 –Pg. 19.

EA Project budgets rarely allow for adequate stakeholder consultation. To bid competitively on projects, consultants are often forced to shelve innovative and effective communications/consultation strategies because they are more expensive, and are forced to adjust their bids and activities to the proponent's predetermined consultation preferences.

Projects typically affect a minority in any community. The majority, who do not feel they would be directly impacted, are often in support of a project without understanding, or having the opportunity to understand, the magnitude of impacts on others. Formal interactive/participatory multi-stakeholder consultation opportunities are crucial to allowing impacted communities to learn about and come to terms with the huge differences on issues that could otherwise divide communities.

Such consultation opportunities may allow for a consensus to emerge on some issues, as well as an acceptance/understanding of different points of view – the issues are not just technical, but also philosophical. Especially for large linear transportation corridors that cross a number of municipal boundaries and where projects impact communities in different ways, this understanding is critical to the overall identification and acceptance of trade-offs that are the essence of an EA.

Proponents often encourage "one-on-one" meetings, or meetings with individual groups, but generally avoid collaborative, multiple stakeholder sessions. I believe that proponents feel that empowering stakeholders might result in a more onerous study for them.

Proponents have historically been unwilling to engage in consultation formats where individuals/groups in a community get to hear what others have to say –i.e. hearing the "other side" of an issue. This isolation of stakeholders and trying to keep a lid on any opposition to a project is destructive to communities and may not result in a comprehensive assessment of the issues during the EA.

Few proponents appear capable or willing to deal with what they view as the "softer" issues, i.e. social and cultural environment. There is a consistent failure to produce reliable, independent data about the purported economic benefits/costs of a project.

Often, proponents appear to prejudge what constitutes a valid concern/comment and fail to consider that objectives/priorities of stakeholders are likely to be very different in some key areas than those of the proponent.

Entire categories of concern to the general public e.g.. human health risks are rejected outright because proponents are unwilling and/or unable to address such issues though there is a well documented burden of illness associated with things like bad air quality, as an example. There is no provincial agency with a broad health mandate that tends to be involved in EAs, therefore there is no government review of such matters either during the EA. Health Canada, if they are invited as an expert authority once CEAA is triggered, generally becomes involved after the preferred alternative has been identified.

Consultation activities must be informative, in a format relevant to a variety of stakeholder groups and task appropriate. E.g. for individual EAs, when reviewing complex issues such as "Need/Justification" and/or Alternatives To an Undertaking, the consultation format must contain a public education component, should be interactive where possible – e.g. facilitated workshops, presentations followed by Question and Answer session, etc..

Some consultation activities should be directed at a broad audience – e.g. project updates, major EA process changes, while others of a more complex/detailed nature may be of interest to a limited number of stakeholders e.g. those with related expertise, community groups/ngos with related mandates, etc.

Consultation meetings must be held at times of day/year when most stakeholders would generally be around, i.e. not in summer months or around winter holidays, or March break. Sufficient notice must given-so that as many interested people as possible could attend – e.g. between 15 – 30 days, and published more than once in newspapers.

My recommendations:

1. MoE **must** devise a set of **general** guidelines to assist proponents around stakeholder consultation strategies, but these should not be prescriptive. Consultation –format/frequency should be commensurate to the complexity of the proposed project, and the potential for adverse environmental effects. As stakeholders identify issues requiring further consultation, the proponent must respond to these with a task appropriate format.

2. MoE **must** require proponents to submit **Stakeholder Consultation Plans** showing how they plan to consult during the EA, **prior** to filing notices of EA study commencement. For individual EAs, Consultation Plans should set out how proponent intends to engage stakeholders during ToR phase, and proponent must demonstrate the plans flexible enough to respond to requests for a variety of consultation formats. The ToR itself must set out how the proponent intends to conduct stakeholder consultation in the EA study itself – it would then be subject to stakeholder and agency review.

3. MoE **must** require proponents to develop a **Communications Strategy** that would set out how they intend to communicate with stakeholders throughout the

EA study around issues such as EA Study Schedule changes, consultation opportunities, major events affecting project/EA process, etc.

4. In a guideline document, MoE should recommend that proponents consider forming formal EA advisory groups/committees. E.g. **Regulatory Adv. Groups** –all agencies –fed/prov./Cons. Authorities with any interest in EA – principle – in until out; **Municipal Advisory Groups**-representatives from all directly or indirectly impacted municipalities; **Community Advisory Group** –to include broad representation from across impacted area. Some reps selected by local/regional councils, others selected by community organizations, etc..
5. All advisory meetings should be open to the public – the public has a right to know what public agencies are recommending. Advisory Groups should meet jointly at certain intervals to exchange information.

Intervener Funding

The extremely technical/detailed nature of EA documents is such that public involvement is seriously constrained by limited time and expertise.

Intervener funding must be available to community groups/individuals involved in an EA so they are able to participate effectively throughout the study, and to ensure that concerns are properly articulated and recognized.

This is all the more important as municipal staff operate in politicized environments and engage is less than rigourous reviews, and as government reviewers seem less able to provide the expert detailed technical review because of limited resources.

Recommendation:

1. That intervener funding be provided to ngos/community groups/individuals during the EA so as to enable meaningful participation and input.

Harmonization of CEAA/OEAA

Draft agreements to assist with harmonization have been developed by some proponents, but the two acts appear so different as to make harmonization during some key EA phases almost impossible.

Federal agencies do not get formally involved until there is a trigger. A "project" must be identified, federal responsible authority selected, which agency then identifies the various expert authorities. This will generally happen once the preferred alternative is selected under OEAA. The result is that federal agencies are likely to participate at a very limited level- if at all -during key phases of the EA such as development of the ToR.

Issues like Climate Change, Kyoto Protocol and other overarching federal objectives will never get on the EA agenda if not early in the process, particularly when identifying objectives for "Need" and "Alternatives To" phases.

I am not confident that all federal agencies fully understand existing opportunities for involvement prior to the identification of a preferred alternative under OEAA.

There appears to be no provincial agency with a mandate similar to Health Canada. This means that entire categories of concern – e.g. Human Health Risks/Impacts are at best only partially addressed through an EA.

Recommendation:

1. That MoE develop, jointly with CEAA, protocols/guidelines that clearly set out opportunities for federal involvement prior to CEAA being formally triggered, for projects where both OEAA and CEAA approvals/decisions are required.

2. That MoE require proponents to establish Regulatory Agency Advisory groups. All agencies/ministries with a relevant mandate must be identified at the start of an EA, and be invited to participate even before formal federal trigger. Principle – in until out. MoE and the Proponent must educate federal agencies/ministries about opportunities to participate before and after a project is triggered under CEAA.

Demonstrating "Need"

"Needs Assessments" are sometimes conducted by proponents prior to formal commencement of the EA Study. They tend to be in-house exercises justifying why an EA is needed.

For many transportation projects, need is simply accepted because certain projects have been "on the books" for decades, though they have not been identified as a result of rigourous public/multi-stakeholder planning process.

Where Min. of Transportation is the proponent, demonstrating Need is pretty much limited to showing that, if they build a new highway, they could fill it with cars/trucks and provide a particular level of service for selected horizon years, and that it would relieve congestion on the existing road network, while completely ignoring induced travel. Virtually no detailed assessment is provided for other non-road modes-those are viewed as being outside their jurisdiction.

For some projects, the "needs/justification component is included in a scoped ToR.

There is no guidance in OEAA around how proponents should demonstrate need/justification for a project.

Need is not an absolute concept, rather it is relative and contemplates important trade-offs that are rarely identified by proponents. Objectives that would guide the process around assessing "need/justification" must be developed with stakeholders at the beginning of the EA process. It is the precursor discussion to identifying reasonable alternatives to the undertaking.

Recommendation:

1. Proponents must commit to public consultation/stakeholder workshops very early in the process – prior to the development of the ToR –to identify with all stakeholders the objectives that should guide the "Needs/Justification" studies that are conducted in the EA study itself, or included in a scoped ToR if that is appropriate.

Alternatives to the Undertaking

As with Need, there is no guidance in OEAA in identifying **reasonable** Alternatives to the Undertaking. It is entirely predictable that proponents will want to ensure that their project emerges as the preferred alternative.

Most Alts To that are identified by the proponent in the ToR have not contemplated stakeholder objectives, rather reflect the objectives of the proponent, and are evaluated in a subjective manner with the proponents objectives/criteria dominating the process.

Recommendation:

1. Proponents must provide interactive consultation opportunities very early in EA study– prior/during draft ToR development, with the aim of identifying stakeholder objectives/factors/criteria that would guide identification of reasonable alternatives to an undertaking, and inform the assessment and evaluation activities to be undertaken in the EA study itself, or in a scoped ToR where appropriate.

Minister's Decision on ToR

As I understand it, a judicial review would only set aside the Minister's decision to approve a ToR if it could be proven that a Minister acted in a manner that is patently unreasonable. That would seem very difficult to prove. The two court decisions around Sutcliffe/Richmond Landfill ToR indicate this is very much subject to interpretation.

Scoped ToRs contain detailed information/justification about Need and Alts To. The "generic" unscoped ToRs that are now being produced in response to the Sutcliffe/Richmond Landfill decisions are so general it is difficult to get firm commitments included.

As things stand, a deficient ToR could be approved, with a subsequent EA carried out in accordance with that ToR that is known to be deficient in key respects. Though deficient, the EA may still be approved because a key condition for approval is that it be consistent with the ToR..

Recommendation:

1. Stakeholder must have the right to refer the ToR decision to a hearing/tribunal. This is in the public interest **and** in the proponent's best interest in that issues could be identified/addressed **early** in the EA study, rather than at the end. The result would be a more fair and more efficient process, one that is more likely to result in EAs that address issues in the most appropriate manner – thus being more consistent with the purpose of the OEAA.

EA Documents -Public Review Deadlines

Some proponents permit a 90-day review of pre-submission draft ToR documents, or EA studies.

Because the proponents' published EA schedules are rarely met, stakeholders rarely know in advance when key final versions documents are to be released/submitted to MoE by the proponent.

Most municipal staff are unable to get staff reports on Council agendas in time to submit these within the 30-day deadlines associated with public review of ToRs. What often happens is that there is little notification to the public in that these reports are only available at the last minute prior to council decisions. Staff must be able to engage council in meaningful decisions throughout the EA, and the public needs access to the information and to make their views known to their local/regional council decision-makers.

Agencies, with limited resources often have difficulty responding at the level of detail that is expected of government reviewers.

The public, with limited resources and time, is virtually shut out of these review processes as the EA documents are so overwhelming -complexity and sheer number/volume -that most give up.

Recommendation:

1. At least 60 days must be allowed for final ToR review and comment.

2. There must be at least one stakeholder consultation between draft and final versions of EA documents to let the public know the key issues/concerns identified in response to the draft documents. Ultimately, stakeholders are

responsible for doing their due diligence, however, this could greatly help focus stakeholder scrutiny and input to final documents.

3. If the ToR is approved, there must be a stakeholder consultation at which any conditions of approval/changes to the ToR are explained to stakeholders, with a complete approved ToR document available to all stakeholders/posted on project/ministry websites.
4. At least 120 days must be allowed to review and comment on final EA Studies.

ToR and EA Approvals

It can often be decades from the time an EA is approved, to when a transportation solution is actually implemented.

ToR approvals should be valid for a fixed period of time, with EA studies initiated within that time period. Stakeholders/agencies cannot be expected to remain prepared for EA involvement indefinitely.

EA approvals for individual EAs must be limited, with a public process to review the EA study required to ensure that conclusions/approvals remain relevant to the current policy context/state of the environment, etc..

There needs to be some mechanism to tie EA approval to implementation. There are huge land use and property impacts when designating transportation corridors, and then implementing no transportation solution for decades. Municipalities often defer local/regional transportation investments hoping that an upper tier solution will be delivered.

Proponents now propose "combined solutions/alternatives" which involved multiple jurisdictions. The challenges of funding and delivering multiple components of and EA approved solution are staggering.

There must be some cut off for EA approvals beyond 15 years. I'm not certain how this should be approached, nor am I certain if EAs are a good tool for long-term transportation corridor protection. Something between the draconian 2003 Bill 25, and EAs may be needed.

Recommendation:

1. An EA Study must be initiated within a year of ToR approval.
2. When requesting EA approval, proponents must provide a "Project Implementation Plan" –including funding details. The likelihood of a solution actually being implemented should be subject to stakeholder scrutiny.

3. Individual EA approvals must be formally reviewed, via a public process, after 5 years and be completed within 18 months. The review results must be approved by MoE and made public.

Incorporating Transit into the Class EA System

I am generally supportive of transit projects being assessed via a "level playing field" Class EA process, as contained in the preliminary recommendations provided Nov. 10th.

However, several major 400 series highway projects come bundled with transit-way components, or are a mix of "combined solutions", i.e. existing road widening, local transit, HOV lanes, new corridors etc.

There need to be clear guidelines that distinguish between bona-fide transit projects that have been identified as public priorities, which should be subject to a Class EA, from those that have a transit component, but would most appropriately be considered within the context of a full individual EA because these include major new transportation corridors.

Transportation Master Plans

Most members of the public have no idea when TMPs are being developed/reviewed/approved, that these meet certain Class EA requirements for consultation on specific projects contained therein.

The manner in which TMPs are actually implemented, often results in substantial changes to TMP stated implementation priorities and/or projects. Local/regional councils work on current plus 4-year forecasts – political priorities and resources change constantly.

When TMP recommendations/projects make their way into Official Plans via OPAs, the public is rarely aware of these opportunities, and the implications.

The panel should not recommend changes that would reduce future consultation opportunities, based on the assumption that these opportunities occurred during TMP and secondary planning exercises.

If there is no time limit associated with Class EA approvals, there should be some appropriate limit and/or periodic review – please see my earlier comments re individual EA approvals.

Thank you for considering my comments. I would appreciate being advised when the Panel's recommendations to the Minister of Environment are made available to the public.

Yours truly,

Linda Gasser

407 Action Group

cc: Leo DeLoyde, Chair, Transportation Table
Paul Schafer, Senior Program Officer-Ontario Region, CEAA

October 28, 2004 #302
296 Brunswick Ave. TO
M5S 2M7

Dear Dr. Savan and Mr. Rohaly

Re: Improvements to Ontario's Environmental Assessment Process

A broad review of Ontario's EA process is appreciated, especially as there are concerns that major gaps have been occurring that are allowing more environmental harms than goods.

I've gained more familiarity with EAs through extensive concern with the Front St. Extension road project in the core of Toronto.

Of course, being a mere unresourced non-wwwebbed citizen without any training in EAs and the niceties of their execution, I could be wrong on some important aspects as I've been most familiar with a scandalously antiquated approval, and it's just possible that the EAs under the Tories actually did improve things.

But my impression is that EAs seem limited and adept at ignoring hard looks at the greenhouse gas implications of all parts of any proposal, missing both operating energy and the capital energy requirements too. If we are at all serious about Kyoto, or more useful targets of reduction of greenhouse gases, we must do full comparisons, ideally in accordance with international analyses. This should go beyond many direct emissions to the many indirect ones, and include the embodied energy of what's already placed.

With this Front EA near the Waterfront here, while many of the staff involved have done well in their roles, and have beavered away and done their due diligence and public consult reasonably well, it still clunks, as the foundations are built upon the aged EA approval, even before the layered politricks of it all.

Somehow, a weak EA that evaded any transit options to the project (purported to relieve a bit of core congestion and to fix an incomplete grid despite the presence of High Park a little west), has somehow not become staledated despite 15 years of time. It's been adjusted a little bit, but despite the very strong interest of the public in a transit solution, and the interest of at least one councillor in deflecting this road, we've had years of this costly Dumb Growth getting shoved along in the core of the city.

So the matter is now resting upon the faint hope of appeals to the Environment Minister for an Individual EA that likely would force the City to prepare some transit options. One might hope that we then could also have a look at some demand management and origin/destination studies of some of this SOV congestion going east-west right beside a major rail corridor into transit gold.

I'm pleased to have heard that the OECD recently slammed Canada for generally brown behaviours as this particular project would seem to regard climate change as a new issue. Neglect of climate change concerns derives from the 15-year old approval, occurring around the time of the Toronto Target, which some City stats indicate we're obliterating completely. Oops.

EAs should go beyond the direct emissions of transit vs. road to include indirect gas emissions from the resources used in the construction, to the ghgs from the construction processes (including diesel emissions from the work equipment and the workers travelling to and fro, along with the emissions from any extra congestion that might occur to the waste of otherwise solid materials eg/ bldg demolitions). Concrete has more emissions too.

Some would insist that the kilos of fresh paper used by activists to fight stupid things also be accounted for, but at least it's not public money going into trying to deflect this $255,000,000+ project towards transit and savings.

The general blindness of the Metro autocrats that now dominate compact urban form to transit options instead of this road folly with its EA OK is stunning. Transit options here range from:

- just adding more GO trains
- the now 55-year-old Queeen St. subway idea which likely can't occur because of money and politricks.
- a King st. ROW (cheaper financially, high political cost as some clear political will is required along with streetcars)
- the TTC's Harbourfront extension and WWRT which will be less effective at displacing some east-west Gardiner/Lakeshore car traffic - one of the real barriers to the waterfront - as this route whould meander too much and take too long to serve many varied, real and existing core destinations
- a new TTC oriented streetcar line via the Front St extension route to go in along Front St. (again) linking to the Queensway segment of the TTC to expedite transit to and from Etobicoke, which would (in my mind at least), provide an extremely viable transit option for east-west car commuters
- even a hybrid option of the King ROW and the transit FSE hasn't been looked at, though that's maybe even more doable/cheaper
- forget about thinking of doing both a GO busway to beat the Gardiner slowdowns to the Humber and the Front St. transit-way - that'd require imagination and political will and two transit agencies co-operating.
- possibly the TTC will soon be developing a concept for using a part of the Lakeshore for LRT though this seems to double the Queensway segment
- and the road project will pave over a transit usage of the NW rail corridor to the transit-deficit NW area of Toronto, in part because of the rail link to Pearson, though we need higher speed local transit more than a quicker way to the brown elephant at Pearson and we'd also need some interest in the federal level for transit too.

City planning is in such an abandoned mess thanks in part to the forced "amanglemation" and the years of shift-and-shaft urban policy of senior governments, we've also not seen any plans for putting up a bridge over the wide level rail crossing at Strachan Ave. This crossing in the core of the city will see way more traffic with the FSE than the boosted levels now arriving from all the city-okayed new development in the area plus the new linkage of Liberty St. over to Strachan which links much of the area to the grid without costing the public between $60 to $90 or more million when we're all so flush to repair the damages from the Harristocracy - or fund our transit system.

Planning is so deficient and the oversights by City politicians so great that there's been no study of the impacts of how the release of the torrents of daily traffic from the Gardiner at Bathurst St. will potentially harm core urban transit along King, Queen and Bathurst St. by having more SOVs try their shortcuts to different areas by different routes. The assumption that the FSE will "drain" core congestion somehow ignores a basic fact that traffic can flow both ways - and that it will.

East-west transit in the core of the city is particularly rougher and motorists have a valid concern of waiting for streetcars when they're stopped. The transit deficit hasn't really begun to address the issues of the Red Rumbles and our Red Rackets, as we're seeing another round of squabbling about millions, while ignoring multi-millions of saving by nixing the Red Hill Creek Excessway in Hamilton and how much cheaper a transit solution to the bit of congestion that the FSE is supposed to fix. What's a couple hundred million, though we can, do, and will have dumb transit, the Harbourfront Extension perhaps being in that group.

EA processes somehow need to be independent of politricks. They've been lurking within the FSE in spades - and I strongly suspect there are lots more things that I don't know about.

Even within the revolving Endvironment Ministers of the regime of Common Stench, some were arguably within a conflict of interest.

I felt that former Minister Chris Stockwell was in a conflict of interest as he represented an Etobicoke riding just before an election. Etobicokians have historically liked to drive downtown as a privilege it seems and have resisted doing much to change the full impacts of automobility, like, say, toll the Gardiner, to just a fraction of the user-pay of the ferry to the Island or the TTC. A letter of mine to the Integrity Commissioner was not given an acknowledgement to, and I guess I should have not just left it on the office desk on Yonge St. However, I certainly was happy that nothing happened with the EA appeal under Mr. Stockwell and that there was regime change to a potentially greener one - and I quite prefer that to a form piece of paper.

There should be some form of Intervenor funding or at least photocopying or outreach, especially given the quarter billion waste of the FSE and denial of transit options. Perhaps there should be a percentage allocated to a project or have a threshold for project cost which then sets Intervenor Funds in motion.

I don't know how this would have been best structured to have let in the "Where's the transit options" views, but it's been fairly brutal personally for one activist, (moi) and I'm pleased that there are more people against it now.

But it's a little corrosive feeling some hits and knowing there are and have been well-paid staff amply resourced to build a destructive road that sets a record for cost in Canada. A mere one percent of this project is $2.5 million - and some of the people that have bought property in the path of this FSE seem ready to gain at least that much.

One percent of that one percent could have paid for a part-time staff and photocopying etc. during the critical EA period.

Some resource to me personally might have lead to more timely investigation of some personal feelings of misinformation being given to the important City Works Ctte during that critical approvals process. I'd circulated at lunch time at the early Feb. meeting in 02 I guess, some views of a GO Transit staff person contained in the EA documents that weren't available at City Hall for easier access for any City staff or politician to look at, but were instead down at the former Metro building. This person felt that there were some real concerns about interruptions to GO service during the $50 million relocation of the traintracks to make room for this road.

I do remember one Councillor, Ms. Jane Pitfield, being responsible and after lunch asking staff about this point. I have a strong memory of a City staff person, perhaps Mr. Kaufmann, responding that all was okay with GO. Yet even over a year later, in an interview with one GO staffer for the NOW article, there was a real indication that this project was still presenting some big difficulties and that real concerns weren't readily addressed or even resolvable.

But videotapes of the Committee meetings were taped over after a year, so I couldn't readily find out how wrong or right my memory was. This is a smaller point to pursue when I'm running on empty anyway. Some notes scribbled somewhere may exist, but it may be that a City Committee was somewhat mis-informed, not hearing from GO directly, perhaps because GO was kept on a leash - politricks.

I fear we can't always rely on the transit providers nor their ruling politicians to always be transit advocates. Thus both GO and the TTC are imperfect advocates; CUTA can't be specific.

Sure, both of these transit providers have strong, capable, knowledgeable and eloquent transit advocates at both staff and the political/board level.

And sometimes, some things are more worth fighting for than others, and there's a rather intense set of agendas with big gaps between what is okay for a North American setting, given where we've been, and say, European practices, or even American ones.

But I've got no impression that either GO or TTC are actually doing much to proffer a transit solution to and from the transit gold of Toronto in a high demand corridor instead of this road, and I think they're ignoring or downplaying the multiple harms to transit from this Dumb Growth.

I suspect politricks. Some part of that may be with Mayor Miller, being on both groups, may have somehow come to some accommodation with his Deputy Mayor, as Mr. Miller seems to have lost his zeal for a transit solution instead of this Pantalone parkway (as some of us call the FSE), and that both GO and the TTC are relatively thankful to see some relative sunlight at the end of the tunnel that they won't say 'boo' agin Miller, even though this stupid road is a true transit travesty that not only urbanist Jane Jacobs has called an "abuse" of transit, but the FSE is something that counters what world-renowned transit experts Newman and Kenworthy state in their Toronto section of Sustainability and Cities. p. 215 "In most automobile-dependent cities it is found that catering to the car drains a city centre of its life; jobs and residents are dispersed; and conditions for an effective transit system are undermined." (The authors haven't been told of this FSE travesty yet).

So it's been left to citizen groups like EPT, T2000, Railways to the Future and the FrontandCentre group, to do transit planning and advocacy along with some obsessed individuals. While an old Metro excessway plan might have been all that the three governments of Lastman, Harris and Chretien, as these three levels of our governments are coughing up big public money for this Dumb Growth, none to very few of our well-paid politicians and transit staff seem to be saying much of anything against this costly Dumb Growth, in part because of the party politricks of it and not wishing to challenge the Deputy Mayor and Mayor on its non-worth.

And Mayor Miller was almost downright evasive when I was bucking myself up to get the NOW article published, which was still worth doing, as most of our mass tedia have their collective heads up the tailpipe, like many citizens and their politicians.

Even one local 'green' group, I've felt has been pretty weak on this travesty, in part because they're friendly with the new civic regime and may well be getting some funding from them.

So Intervenor funding shouldn't be restricted to just one group.

I'm not alone in wishing that things would have moved faster as it's been about 2.5 years of "Where's the transit?", "Why can't we see some transit options, maybe like this one, please"? But a basic fundamental flaw that has wasted lots of time when we have a climate and air pollution crisis along with serious transport problems - that flaw being a big road project hasn't had a good look at transit options - is outrageous and sad and wasteful.

Heck, even the bike lane greenwashing of this project is very in the "Where's the transit options" views, but it's been fairly brutal personally for one activist, (moi) and I'm pleased that there are more people against it now.

But it's a little corrosive feeling some hits and knowing there are and have been well-paid staff amply resourced to build a destructive road that sets a record for cost in Canada. A mere one percent of this project is $2.5 million - and some of the people that have bought property in the path of this FSE seem ready to gain at least that much.

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Sure, both of these transit providers have strong, capable, knowledgeable and eloquent transit advocates at both staff and the political/board level.

And sometimes, some things are more worth fighting for than others, and there's a rather intense set of agendas with big gaps between what is okay for a North American setting, given where we've been, and say, European practices, or even American ones.

costly, frustrating and in error. While bike lanes are often good, it's galling to know that we can add more asphalt for 905 SOVs to 'complete the grid' while failing to do a damned thing in the general area for many urban cyclists that play the roadkill roulette in nearby areas where cyclists actually ride. A proper EA screening might cost out just how much these bike lanes are and consider how the entirety of the bike plan could be furthered if that money were to be re-allocated. I figure these bike lanes cost maybe between $6 to $12million (land, asphalt, roadworks under the railtracks and their moving) and yet maybe as little as one metre of this Pantalone parkway - about $125,000 - could get us a long bike lane from High Park to Sherbourne St. easily done with just paint as there aren't any streetcar tracks that prevent the road lanes from being re-drawn.

The new chair of the TCC, Councillor Giambrone, has back-tracked on his opposition to the FSE after being narrowly elected and some say he owes Mr. Pantalone big-time for getting him elected. The City's bike plan admits that it is deficient in the west-end central city and there are staffing issues along with funding and politricks that are harming this tepid bike plan, already weaker because of the politics involved of doing bike lanes.

Even the Toronto Board of Health seems pretty hypocritical as Chair Joe Mihevc's voted for this FSE. I haven't bothered writing them yet, but their integrity is suspect in my view at this time.

So Intervenor funding should be going to a much wider circle than merely transit groups to counter a rather big systemic flaw in how environmental issues intersect with roads, noted in neutral comment from Mr. Gord Miller, ECO, in the new annual report. On p.149 - "Unfortunately, Ontario residents with environmental concerns about MTO's highway construction policies and practices have rather limited opportunities to apply the normal EBR review tools, because MTO is not prescribed for reviews under the EBR."

While some of us aren't convinced that the ECO and the EBR are as great as it could be, nonetheless, it seems that a useful screen that would perhaps trim the EA process(es) isn't in place.

This is especially needed as transport leads our ghg emissions and we're flubbing the reduction targets rather brutally. Pointing this out doesn't pay, and we'd rather fry our kids, drown island nations and be climate criminals etc. than stop driving.

And judging by the fresh layer of asphalt in the rear parking lot Queen's Park, this driving-and-paving-as-usual as momentum. (Not that the city is too much better really - the College St. rebuild in one segment between Spadina and Bathurst was another ordeal that perhaps could be cited in contributing to Canada's low standing in the OECD review. Some good sound cement was just wasted and there's an awful lot of new concrete there too. We'll see if the bike lanes are actually plowed and useable this winter and lawsuits may be more effective than "green" concerns.

So this opportunity to influence an EA review, drawing upon BIG flaws with the current system should mean both a stale-dating of EAs - three to six years of no action and you lose it - and an insistence that with some larger projects of a certain age, alternatives **must** be presented and reviewed in order to keep the original approvals. This could also catch some clunkers like the Red Hill Creek destruction.

There's also a strange set of circumstances that some transit projects and cleaner-energy projects get multiple hoops, yet the status quo problems go under the radar. I supported the EA process for the St. Clair ROW, still feel there's a better busway option, but won't pursue it, one cause being destructive enough.

There's also a need for Intervenor funding to a variety of groups. As you may gather, I'm grumpy with poor basic planning, and even this is yet another five to seven hours and copy expense plus opportunity costs when I'm near bankrupt already, in part to TAF and waaaay too much unsustainable activism for transit, civic adherence to their Toronto Target which council re-affirmed, smog reduction goals, car reduction goals, and a few other statements about transit-first stuff, (except now and with $255,000,000.)

As another aside to the damages done by this project, the Part ii Waterfront plan didn't have the same amount of provincial review and appeal that the Official Plan did. So this Dumb Growth seems to be relatively enshrined and now the province seems to be keen on embracing this stuff even though there's a transit travesty embedded within it. This also means letting languish the vital diagonal cut-through for a Front St. transitway borrowed from the Metro roads department and just shrunk by two-thirds for transit along some now-empty land near front St. just east of spadina.

Oh well, transit opportunities of the greenhouse century will just get built over and ignored, like other transit options that predate the road project like the Queen st. subway. Maybe there will be some interest some decade in an exploration of some transit options here which could help save maybe up to a $100 million for other purposes if anyone's interested.

I also sense that there's a need for an EA about Waterfront Renewal and a newer wall of buildings along the lakefront as incoming fresher and cooler lake breezes may well get stopped by some buildings to both heat up areas inland and contribute to a greater smog level. I don't think this has been explored, though it's a sorta long-term environmental/health impact.

Thanks for review and the reading through of all this.

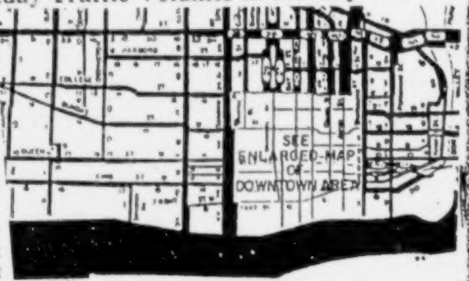
Hamish Wilson
cc. Mayor Miller, Councillor Watson, maybe others next week

Star, Dec. 6, 200

eds transit

Councillor Joe Pantalone (Ward 19, Trinity-Spadina), a budget committee member, said transit is key to accommodating future growth. "It's inconceivable that that growth can occur without being supported by a transportation system, which has to be transit. Yet that's what's happening, and it really is a recipe for disaster for the community."

day Traffic Volumes in the City of Toro



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He did have a suggestion, however. "Perhaps we should think about using the Front Street Extension itself as the beginning of a transitway," Miller said. "You could have the Lakeshore streetcars connect along Front Street and come right downtown, which would give you rapid transit to southern Etobicoke."

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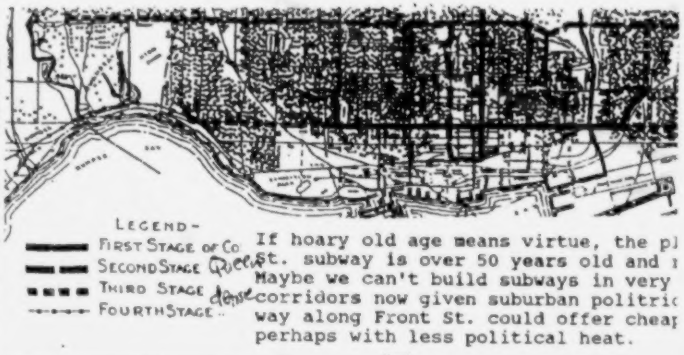
21/02



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transportation

NOW May
13/2004

Miller's weird Front

Why is green mayor backing extension when TTC is starving?

By HAMISH WILSON

THE GOLDEN SHEEN OF MAYOR DAVID Miller seems untarnished, but there's one area where the popular mayor is definitely losing his glow.

I'm talking about the proposed $255-million Front Street Extension, a two kilometre roadway deemed the priciest in Canada. Transit buffs and environmentalists ask why our green mayor is backing this 20-year-old cash-gobbling, car-focused project when the TTC is starving to be refurbished? The answer is far from clear.

Miller's stated reasons tie the plan to the development of the waterfront, the burying of the Gardiner Expressway and the need to lessen car congestion and allow the TTC on King and Queen Streets more leeway.

But as his critics point out, studies of the Gardiner are just beginning and will take at least another three years. Who knows what the final decision about its fate will be? And don't public transit options offer much more economical and effective ways to move people?

The plan at the heart of this mayoral credibility gap would extend Front Street past Bathurst north of Fort York and give motorists new access points to the Gardiner. As well, it would create a small street from Bathurst to Dufferin and the Lakeshore below the half-developed Liberty Village. This despite the fact that there is already a new grid connection linking Liberty to Strachan.

The councillor on the hot seat over the street spree is Trinity-Spadina's Joe Pantalone, who is convinced that the plan is necessary because condos are sprouting quickly in the Liberty area, with another 10,000 units approved south and east of Fort York.

"There are whole new neighbourhoods being built over there," he says. "And guess what? You need a road to put the bus on, you need a road to put the bicycle on, you need a road for pedestrians. If the FSE never gets built, the Gardiner will never be taken down. That's a fact."

Perhaps if it were just a local road the debate might have a different tone – but Pantalone also endorses three new access routes for the heavy Gardiner/Lakeshore commuter traffic: a new spur connecting Front and the Gardiner at Bathurst; another from Strachan to the new Front Street Extension and the Gardiner; and an entrance onto the Lakeshore from Dufferin.

His thinking goes like this: People coming from the west or going westward have no way to come into or exit the downtown other than using the existing road system. That's creating a traffic mess at the Spadina and Jameson ramps and gridlock on King and Queen, slowing streetcars. The new exits, he believes, would drain traffic everywhere in the core area.

Pantalone is a downtown councillor and knows the reality of auto-focused mobility. "The car is the single biggest environmental transportation problem" in the city, he says. Yet here he is helping to funnel a mountain of cash to the private transit solution.

FSE dissers point to an established traffic truth: new roads never lessen car density. And they can't figure out why Miller and his deputy mayor, Pantalone, aren't getting it. Grassroots transit expert Steve Munro says the project "would do on the west end of downtown (from a neighbourhood perspective) something on the same scale as the Island Airport" – opposition to which brought Miller to power.

And Munro insists the money could buy a range of better transit options. Critics are told they can't have that $255 million, shared equally between the three levels of government, for transit, he says, because it's earmarked for waterfront projects. "Well, I've got a few waterfront projects in mind, like rebuilding the Union Station loop to actually carry passengers from the east end of the city to the west." Or building streetcar tracks right down the middle of Front.

John Banka, the chair of Environmentalists Plan Transportation, is on the same wavelength. The real answer, he says, is to be found in adding more GO service. "Only 1,500 motor vehicles an hour will be able to use the proposed ramp, while one GO Train can carry 1,600 people. One GO Train an hour could carry all the traffic that would use the ramp of the FSE." The FSE plan, he says, "does not eliminate a single vehicle" and could hinder GO operations.

Mayor says road is crucial to waterfront development.

Also incredulous is the area's other councillor, Parkdale-High Park's Sylvia Watson. "The city doesn't have the money to maintain the infrastructure we've got, so how we would think it right to spend this amount on a new road is a mystery," she says.

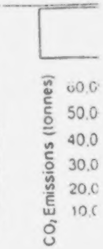
With the current budget crunch crippling most of the dreaming at C Hall, Scarborough Centre councillor Glenn De Baeremaeker warns that FSE funding is likely to come not from taxes but from the city's taking out a loan. "We're counting on the feds and the province to say absolutely not."

Both these governments have environmental assessments for the FSE in process: the 15-year old provincial one is being appealed, hopefully to make it more stringent, and the federal one hasn't yet begun and could look at issues like climate-saving transit to help meet T.O.'s Kyoto targets.

So where is the mayor in all this? Sandwiched somewhere between car-oriented suburbanites and environmentalists, for one thing. When pressed for an interview, Miller replies that he'd like to avoid comment until the issue has stopped "evolving." Some have suggested he may be considering separating off the roadway from the access routes, and that while he's wary of endorsing a plan trashed by green transit folk, he's loath to turn down waterfront cash from the province and the feds.

In a letter sent to me last month by Miller spokesperson Cara-Marie O'Hagan, the mayor is said to "believe the extension is a necessary first step to developing Toronto's waterfront."

Will the city's eco-friendly mayor really risk his rep and the widespread grassroots support that goes with it for a Cadillac roadway and more expressway ramps? Or does he have up his sleeve a quick exit on steel wheels to this auto boondoggle? ◎



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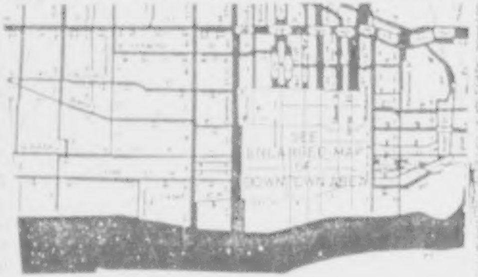

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transportation

Now May 13/2004 ✓

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C$3.75 plus applicable tax **October 15–21 2004** Vol 171/No 17/Printed in Montreal

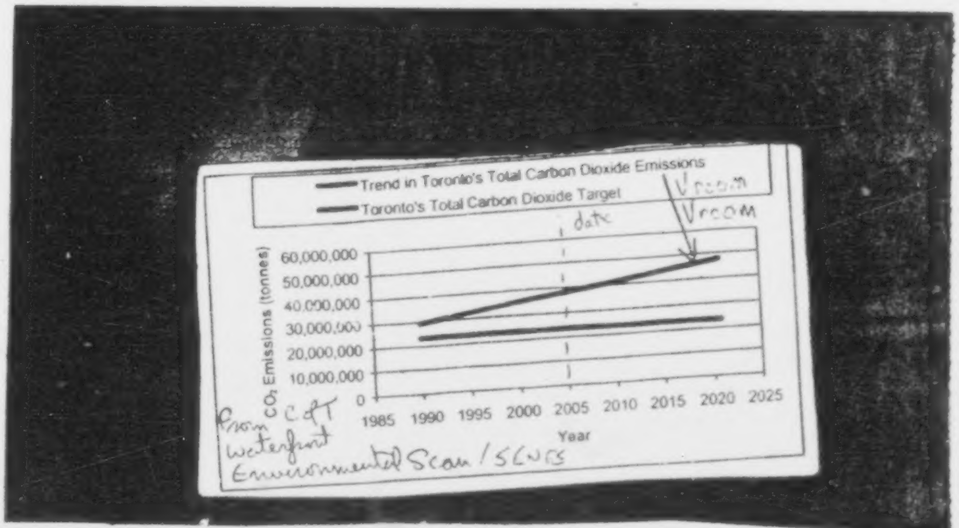
Climate fear as CO_2 soars

Scientists bewildered as carbon levels rise sharply for second year running

Paul Brown

An unprecedented and unexplained rise in carbon dioxide in the atmosphere two years running has raised fears that the world may be on the brink of runaway global warming.

Scientists are baffled about why the quantity of the main greenhouse gas has leapt in a two-year period and are concerned that the Earth's natural systems are no longer able to absorb as much as in the past.



Global warming may be accelerating, scientist fears

Guardian Weekly August 14-20/2003

One of Europe's leading scientists has raised the possibility that the extreme heatwave experienced by at least 30 countries in the northern hemisphere could signal that climate change is accelerating, *John Vidal writes*.

"The heatwave across the northern hemisphere is worrying. There is the small probability that man-made climate change is proceeding much faster and stronger than expected," said Professor John Schellnhuber, former chief scientific adviser to the German government and now head of the UK's leading group of climate scientists at the Tyndall centre.

Prof Schellnhuber said: "The parching heat" could be consistent "with a worst-case scenario [of global warming] that nobody wants to come true". He warned that several months' research would be needed before scientists could say why the heatwaves are so intense this year.

"What we are seeing is absolutely unusual," said Prof Schellnhuber. "We know that global warming is proceeding apace, but most of us were thinking that in 20-30 years time we would be seeing hot spells [like this]. But it's happening now."

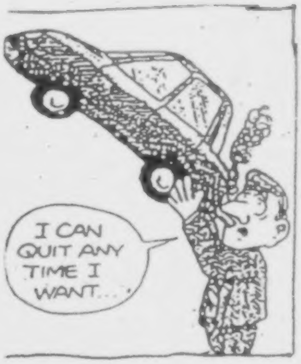
Other climate scientists across Europe suggested the heatwave was perhaps linked to global warming.

"We've not seen such an extended period of dry weather [in Europe] since records began," said Michael Knobelsdorf, a meteorologist at the German weather service. "What's remarkable is that these extremes are happening at such short intervals, which suggests the climate is unbalanced."

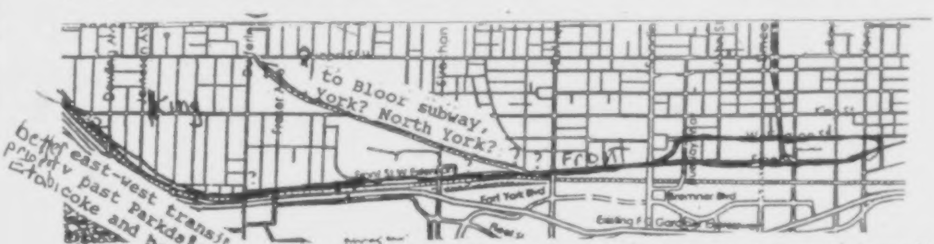
Temperatures across parts of Europe have been 5C warmer than average for several months, but the heatwaves have extended across the northern hemisphere. Temperatures in some Indian states reached 45-49C, with more than 1,500 people dying as a direct result. There have been near-record temperatures in Canada, the US, China and Russia.

The intense heat in some places has given way to severe monsoon rains, a phenomenon also consistent with climate change models that predict extremes of weather.

The UN's intergovernmental panel on climate change (IPCC) has predicted that temperatures will rise by 5C over the next century. But a recent conference of leading atmospheric scientists in Berlin concluded that the upper limit of global warming should range between 7C and 10C, which would severely affect food and water supplies.


I CAN QUIT ANY TIME I WANT...

The car-based Front St. Extension thinks more car space will solve a bit of congestion, ignores any transit solution (GO or TTC) and costs $255,000,000.


King
to Bloor subway, York? North York?
? ? Front
better east-west transit priority past Parkdale, to Etobicoke and beyond
Front St W Extension
Fort York Blvd
Bremner Blvd
Gardiner Expressway

If we did want to spend some money on good transit, perhaps a Front St. transitway that Miller saw as a Councillor two years ago might look like this

of a natural process unpreced
in the record."

Analysts stress that it is too early

We're watching the clock and it's ticking

that climbed [illegible]
El Niño years — 1973, 1988, 1994 and 1998.

Mauna Loa Observatory
www.metoffice.com/research/

300 Dufferin Avenue
P.O. Box 5035
London, ON
N6A 4L9

London
CANADA

October 28, 2004

Advisory Panel on Improvements to
Ontario's Environmental Assessment Process
Strategic Policy Branch
135 St. Clair Avenue West, 11th Floor
Toronto, Ontario M4V 1P5

Dear Panel Members,

RE: Comments on Improving the Environmental Assessment Process

This letter and attachment prepared by City staff provide a number of comments and suggestions on how to improve Ontario's Environmental Assessment process. Staff from the City of London are well versed in the EA process with many years of experience dealing with waste disposal issues. Several staff have been involved with waste management planning since the MOE produced its Blue Print for Waste Management back in 1983.

The short time between the Environmental Bill of Rights (EBR) registry posting (September 20, 2004) noting that Ministry of Environment (MOE) was seeking input on ways to improve Ontario's Environmental Assessment (EA) process, the time when many municipalities actually became aware of this opportunity (early October) and the deadline for input (October 31, 2004) precluded City Council endorsement. This letter and attachment will be provided to Council at their next meeting.

The City of London strongly supports the MOE's initiative to improve the Province's EA process and appreciate this opportunity to provide comments to the advisory panel on how to improve the EA process.

The City of London has been in participating in a joint waste management EA planning exercise with the County of Middlesex for the last 10 years. Our suggestions and comments with respect to improving EA process are based on this experience and are contained in the attached document entitled *Submission to the Ministry of Environment – Advisory Panel on Improvements to Ontario's Environmental Assessment Process*.

Since starting our waste management planning process in 1995, the changing direction and requirements at the Provincial level have created a frustrating experience not only for many elected officials but more importantly for the people that they represent in our community. The City/County long term disposal plan, as part of our overall waste management strategy, has been placed on hold several times in order that we do not unnecessarily spend funds and consume staff resources.

The Environmental Assessment process with respect to expanding or siting a new landfill must be articulated clearly with guidelines that are both practical and environmentally sound. It is critical for London and other communities to have direction with respect to this matter as soon as possible.

.../2

We are of the opinion that the uncertainty associated with the Environmental Assessment process has directly contributed to the waste disposal crisis that currently exists in other parts of the Province and, until the rules are changed, will continue to be counterproductive to the environment and economy of Ontario. We are aware that many other waste disposal environmental assessments have grounded to a halt in the last 12 to 18 months.

I would also like to highlight a recent response from The Honourable Minister Dombrowsky where she refers to a meeting held with London Mayor Anne Marie DeCicco, City of London Controller Russ Monteith (Chair of the City of London/County of Middlesex Waste Management Steering Committee) and Grant Hopcroft, Director, Intergovernmental and Community Liaison, City of London. One purpose of the meeting was to highlight the need for the Ministry of the Environment that clear rules and processes be established in a timely fashion for expanding or siting waste disposal facilities.

We hope you will find our comments useful as you undertake this important work.

Yours truly,

Pat McNally, P. Eng., Director
Water, Environment & Customer Relations

Attachment September 29, 2004 letter from The Honourable Leona Dombrowsky

Submission to the Ministry of Environment – Advisory Panel on Improvements to Ontario's Environmental Assessment Process (prepared by City of London staff)

c The Honourable Leona Dombrowsky, Minister of the Environment
Roger Caranci, Chair of the Environment & Transportation Committee
Chair and Members of the City/County Waste Management Steering Committee
Pete Steblin, P.Eng., General Manager of Environmental & Engineering Services & City Engineer
Jay Stanford, M.A., M.P.A. Division Manager, Environmental Programs & Customer Relations

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Ministry of the Environment

Office of the Minister

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Tel (416) 314-6790
Fax (416) 314-6748

Ministère de l'Environnement

Bureau du ministre

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12e étage
Toronto ON M4V 1P5
Tél (416) 314-6790
Téléc (416) 314-6748

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☐ For Information ☐ For File

CITY MANAGER'
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Action Jay Stanford
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SEP 29 2004

Her Worship Anne Marie DeCicco – Mayor
Mr. Grant Hopcroft – Director of Intergovernmental and Community Liaison
Mr. Russ Monteith – Controller
City of London
P.O. Box 5035
London ON N6A 4L9

Dear Mayor DeCicco, Mr. Hopcroft and Mr. Monteith:

I want to take this opportunity to thank you for attending the recent Association of Municipalities of Ontario (AMO) conference in Ottawa, and for bringing your comments, concerns, and perspective to my attention. It was a pleasure meeting with you.

As Minister of the Environment, I understand the importance of working with our municipal partners to achieve our common goals. I want to assure you that addressing the issues you raised is important to me and the ministry. My office has shared your information with the appropriate ministry staff.

I appreciate the city's focus on reaching the province's 60 percent waste diversion target. My ministry is working closely with Waste Diversion Ontario (WDO) to help municipalities divert 60 percent of waste from landfill within five years. WDO is now developing waste diversion programs for used tires and used oil. Other materials that we are interested in dealing with include: household special wastes (paints and solvents), organics such as kitchen waste, pharmaceuticals, electronics, batteries and fluorescent lighting tubes. Under the WDO's Blue Box Program Plan, industry stewards will fund municipalities for 50 percent of the net costs they incur to operate their Blue Box systems. The Plan is intended to divert more Blue Box materials, and it also gives stewards a direct financial incentive to use less packaging or packaging that is less costly to recycle.

On June 10, 2004, I announced a province-wide consultation that will seek new ideas to achieve 60 percent waste diversion from disposal. Five public forums were organized across the province to foster public input. I also released a discussion paper that sets out approaches for increasing the amount of waste that is diverted. More information about these activities is available on our web site at www.ene.gov.on.ca under the LAND section.

I appreciate your interest in reforms to the Environmental Assessment process. As you know, in June 2004, I announced the formation of the Environmental Assessment Advisory Panel to make recommendations on the development of proposals for ways to improve the Environmental Assessment process for waste management facilities, transit and transportation projects, and

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clean energy facilities. Panel members include experts from academia, industry, the legal profession, and municipalities. The panel met in August and September, and we will keep our municipal partners informed about any developments that will be of interest to them.

On the subject of the ministry's draft source protection planning legislation, I recognize the importance of working closely with municipal officials and conservation authorities to achieve our common goals with regard to our combined efforts to protect the province's groundwater, surface water, and watersheds.

The ministry's draft source protection planning legislation deals with the planning aspects of source protection only and is based on the White Paper on Watershed-based Source Protection Planning that the ministry consulted on from February to April of this year. To address the implementation aspects of source protection, I have established two multi-stakeholder advisory committees. The Technical Experts Committee will advise the government on scientific aspects of source protection, while the Implementation Committee will advise on tools and innovative funding mechanisms and incentives for the implementation of source protection.

All of the feedback received on the draft source protection planning legislation will be taken into account as we move forward on implementing this important initiative. We will continue to work with all stakeholders to ensure that our collective goals and objectives are met.

With regard to the City of London's proposed expansion of its W12A Landfill Site EA, I am aware of the city's efforts to prepare a new Terms of Reference (ToR) for the EA, and your preference for a "scoped" process. As you may know, on June 28, 2004, the Ontario Court of Appeal overturned the Richmond decision of June 2003. While the recent Court of Appeal decision pertaining to the Richmond Landfill EA has provided some flexibility in how ToRs and EAs can be developed, I have also asked the EA Advisory Panel for their recommendations on this matter.

Until the EA Advisory Panel makes its recommendations, I would encourage you to make arrangements to meet with staff from our Environmental Assessment and Approvals Branch (EAAB) on how to proceed with the city's ToR. Arrangements can be made through Mr. Andrzej Dominski, Manager of the EA Project Coordination Section of the EAAB. He can be reached by calling 416-314-7967.

Thank you, again, for taking the time to meet with me, and please accept my best wishes.

Sincerely,

Leona Dombrowsky

Leona Dombrowsky
Minister of the Environment

Submission to the Ministry of the Environment – Advisory Panel on Improvements to Ontario's Environmental Assessment Process

Focus – Waste Management Table

Prepared by the
City of London

October 2004

Background and Experience of the City of London and the County of Middelsex:

The City of London and County of Middlesex have been involved in the Environmental Assessment (EA) process for several years with respect to waste management planning. The London/Middlesex Waste Management Plan, a cooperative project of the City of London and the County of Middlesex, began in 1995. The Plan is being developed to ensure that the necessary parts of an environmentally and economically sound integrated waste management system are in place to serve the needs of the City/County for the next 25 to 40 years. The City and County have been frustrated over the years with changing and ambiguous rules which make it difficult to address our long term needs.

When work on the plan began, the City/County was following the "sectoral EAP" process which received 50% funding from the province. The sectoral EAP required the proponent undertake a five step planning process. The City completed the first three steps of this process resulting in a City council approved waste management strategy (known as the Continuous Improvement System).

Work on the remaining two steps of the process (finding additional disposal capacity) were underway when in 1997 the rules for completing an EA changed. The MOE introduced the "Terms of Reference" (ToR) process and stop funding of waste management studies.

The City/County followed the new process and produced a draft ToR in December 1998. Finalizing the ToR was delayed because of local issues (e.g., closure of the Energy–From-Waste plan, etc.) and changing rules/advice from the Ministry.

A revised "scoped" Draft ToR had been prepared in 2002 and was ready for public release when a Court Decision on the Richmond Landfill resulted in the Ministry advising the City/County that "scoped" ToRs would no longer be approved. No activity has occurred for two years as we await direction from the MOE on how to proceed. We recognize that some work could be undertake, however dealing with the current level of uncertainty has prompted the City/County not to expend any further funds and resource time until proper direction is available from MOE.

Staff from the City of London and County of Middlesex are well versed in the EA process with many years of experience dealing with waste disposal issues. Several staff have been involved with waste management planning since the MOE produced its Blue Print for Waste Management back in 1983.

Goals of the Minister's Advisory Panel:

1. **Revitalize** the EA program providing clear, prescriptive rules for appropriate environmental planning and decision-making

2. **Rebalance** EA decision-making by setting out clear roles for all participants.

3. **Refocus** the EA process such that the level of assessment/review of proposed undertakings reflects the potential that proposals have to positively or negatively impact the environment as defined by the *Environmental Assessment Act*.

Summary Comments on the Goals of the Minister's Advisory Panel:

We strongly support the goals of this initiative.

The biggest hurdle for any proponent to overcome in the EA process is the level of study required (e.g., how big should the study area be? how detailed an evaluation of alternatives is required? etc.). How much is enough? By revitalizing, rebalancing and refocusing the EA process, the EA process can be improved.

Below are our suggestions, based our experience, to improve the EA process.

Specific Comments and Advice on EA Process Areas Identified in the Terms of Reference

Prescriptive Requirements and Technical and Policy Guidance

General Comments:
The most difficult part of the EA process for a municipality is determining the appropriate level of investigation into the "alternatives to the proposed undertaking" and "alternative methods of carrying out the undertaking". How much is enough? What are reasonable alternatives?

We believe there needs to be prescriptive requirements plus technical and policy advice that provides clear direction as to the "level of effort" required by the proponent to satisfy the requirements of the *Environmental Assessment Act* with respect to what are reasonable "alternatives to" and "alternative methods of".

Our Advice:
Options for providing a proponent with direction with respect to examining alternatives for waste management undertakings include:

1. providing generic evaluation of waste management technologies that can be used by all proponents
2. listing of pilot/emerging waste management technologies that can be excluded from consideration
3. committing to "best practices" eliminates need to examine alternatives
4. providing guidance on "scoping" in the ToR

1. Generic Evaluation

Preparation of a generic evaluation of all/many waste management technologies by the province would be a valuable document for waste management EAs. This document could be used by proponents to determine which technologies represent reasonable alternatives for their community. This would save a significant amount of time in the development of a ToR/EA and would provide an evaluation of the alternatives to an undertaking that could not be challenged as being biased because it was prepared by the proponent or proponent's consultants.

A generic evaluation of alternatives was completed by the Province in the early nineties but never publicly released. The time is right for such an evaluation.

2. Emerging Technologies

Many proponents do not want to consider emerging technologies because of the risks, cost, size of community (e.g., insufficient waste quantities), length of time to obtain approvals, etc. As part of the generic evaluation of waste management technologies, a list of emerging technologies that can be eliminated by proponents wishing only to consider proven technology should be provided. In addition consideration should be given to waiving some or all EA requirements for pilot testing of emerging technologies in order to encourage their development.

3. Committing to Best Practices/Industry Standards

Proponents should be able to address some of the requirements to examine "alternatives to the proposed undertaking" and "alternatives methods of carrying out the undertaking" by committing to best practices or industry standards. For example:

Commit to Best Practice/Industry Standard		Scoping of Alternatives to Examine	
Commitment:	Provide plan to meet the provincial waste diversion goal of 60%	MOE approved ToR Scoping:	Not necessary to further examine waste diversion alternatives
Commitment:	Provide evidence that indicates the available waste quantities are below the minimum quantity required to make Energy-From-Waste viable as determined by MOE "generic evaluation"	MOE approved ToR Scoping:	Not necessary to further consider Energy-From-Waste as an alternative disposal method
Commitment:	Use Provincial "Landfill Standard" design for leachate collection system	MOE approved ToR Scoping:	Not necessary to look at alternative leachate collection designs

4. Provide Guidance on "Scoping" in the Terms of Reference

Prior to the ToR process being placed on hold, some waste management proponents have successfully used the ToR process to "scope" the degree to which "alternatives to the proposed undertaking" and "alternatives methods of carrying out the undertaking" are examined. This allowed proponents to develop a "reasonable" list of alternatives to examine at the onset of the EA process.

Scoping of the alternatives through the ToR process should continue to be allowed for waste management facilities that are more routinely established and have predictable and mitigable environmental effects. There should be clear guidance documents on scoping so that the level of assessment/review of proposed undertakings reflects the potential that proposals have to positively or negatively impact the environment as defined by the *Environmental Assessment Act*. For example:

Waste Management Facility	Comments on Level of Scoping
"Greenfield" Waste Disposal Facility	No scoping
Expansion of Existing Waste Disposal Facility	Some scoping on alternative methods (i.e., proponent has the option to reduce/ eliminate the need to look at greenfield sites)
"Greenfield" Waste Diversion Facilities	Most facilities already exempt from EA; allow some scoping on "alternatives to the proposed undertaking"
Expansion of Existing Waste Diversion Facility	Most facilities already exempt from EA; allow some scoping on "alternatives to the proposed undertaking" and alternative methods (e.g., eliminate the need to look at greenfield sites)

Government Review Process

General Comments:
Generally, the formal government review process works well except for the ability of the MOE to meet the regulated timelines for the review of ToRs and EAs.

On some occasions, the MOE has provided inconsistent direction or different advice to different proponents.

Our Advice:
The Ministry should ensure that the necessary resources are available to meet the regulated timelines for review of ToRs and EAs.

The resources must also be in place that MOE can provide consistent advice/clarification to proponents in a timely fashion during preparation of an EA.

Decision-making/Approval Processes

General Comments:
The introduction of the ToR in the EA process gave the Minister the ability to reject an undertaking with an incomplete (or deficient) assessment early in the process. This prevents proponents from expending significant amounts of effort, money and time on an EA that is doomed to failure. Proponents would benefit from additional opportunities to have their EA process reviewed throughout the completion of the EA.

Our Advice:
Consideration should be given to providing opportunities to have an EA process audited/confirmed (e.g., Major Milestone Audits) as having met its obligations as defined in the ToR throughout the EA process. This new step(s) would occur after the review and approval of the ToR and before review and approval of the Final EA. At a minimum, the EA process should be reviewed after the proponent has completed their review of the "alternatives to the proposed undertaking" and before they begin their review of the "alternatives methods of carrying out the undertaking".

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Such a Major Milestone Audit would have similar benefits as the ToR review and allow the Ministry the ability to reject an undertaking with an incomplete (or deficient) assessment part way through the process saving the proponent from wasting further effort money and time. Major Milestone Audits would also make the proponent and MOE more accountable to the public and provide transparency to the process.

Public Participation

General Comments:
Pubic participation and consultation is an important part of the EA process. However, often public consultation is limited to nearby neighbours of a proposed facility and/or organizations with an interest in the environment. The "general public" often do not get participate in the process and therefore their views are not reflected in the EA. This can result in the EA process being driven by a small portion of the overall community.

Our Advice:
Proponents need to do a better job of obtaining and incorporating the views of the general public in its decision making process. Guidance documents from the MOE must encourage proponents to obtain balanced input by moving beyond meetings and open houses and including methods such as public opinion surveys to get public input. The MOE must also recognize that the views of organizations with an interest in the environment, nearby neighbours and the general public may not be the same and trade offs may be necessary when addressing these different views. Guidance documents must reflect this reality that has plagued numerous consultation processes to date.

Transparency and Accountability

General Comments:
Transparency and accountability are best ensured by regular scrutiny of the process.

Our Advice:
Additional reviews/audits of the EA process were proposed in our previous comments under "Decision-making/Approval Processes". Having additional reviews/audits would make the EA process more transparent and accountable. Our proposed Major Milestone Audits would assist in address these issues.

Monitoring

General Comments:
Monitoring of an EA, both the process to complete an EA and the implementation of the EA, is important.

Our Advice:
Consideration should be given to having proponents of major undertakings (e.g., landfill expansions, greenfield sites, etc.) complete annual reports to the MOE that will reviewed and reported on by the Office of the Environmental Commissioner. This established office is well known for producing its annual report and would at one time bring to the attention across Ontario all waste management EAs including their status.

ONTARIO'S ENVIRONMENTALASSESSMENT PROCESS

Comments submitted tothe Minister's Advisory Panel
Mr. Blair Rohaly, Project Manager
Strategic Policy Branch
prepared by the **Conservation Committee** of
THE OTTAWA FIELD-NATURALISTS'CLUB
October2004

1. BACKGROUND

We appreciate thisopportunity to comment on the environmental assessment process. The OttawaField-Naturalists' Club (OFNC)was chartered in 1879, and consequentlyhas a uniquely long history of involvement with many aspects of naturalheritage. In accordance with our constitution and objectives, wefocus here on the EA process that ultimately decides whether naturalheritage and greenspace lands are protected or destroyed. We also believe,however, that reforms to the process will serve the public interest equally well in all cases where EAs are, or should be, required.

The views presented below are consistent with ourresponse to the Ontario Government's recent initiatives towards planningreform. Earlier this year we submitted that response to the Ministry ofMunicipal Affairs and Housing.

2. GOALS AND DUTIES SET FOR THEPANEL

We note that the goals andduties set by the Ministry for the Panel are to:

*Revitalize the EA program providing clear, prescriptive rules forappropriate environmental planning and decision-making.
* Rebalance EA decision-making bysetting out clear roles for all participants.
* Refocus the EA process such that the level ofreview/assessment of undertakings reflects the potential that each proposalhas to positively or negatively impact the environment as defined by theEnvironmental Assessment Act.

-identify key impediments to obtaining timely approvals for projects in thekey sectors subject to the environmental assessment process (i.e. waste,transit/transportation, and cleaner energy); and
- examination of the existing environmentalassessment process and identification of potential improvements to suchareas as:
-prescriptive requirements and technical and policy guidance;
* government review process;
*decision-making/approval process;
* public participation;
* transparency and accountability; and
* monitoring.

3. COMMENTS AND RECOMMENDATIONS

We are concerned that the Panel is asked to"identify key impediments to obtaining timely approvals". It is notthat we object to seeing projects obtaining timely approvals under anefficient system. Our objection is that, while EAs as presently carriedout might superficially comply with regulations, in reality theyare treated as a mere formality. Many delays could be avoided by havingclear rules that would make time-consuming OMB appeals unnecessary. Ourprimary concern is the protection of natural heritage andgreenspace, where it is important to "make haste slowly". We considerthat some EAs as performed at present are so badly flawed that they canonly be described as a sham.

We identify flawsin the EA process as generally falling into three categories, as detailedbelow.

3.1 ASSIGNMENT OF PROFESSIONALS TOPERFORM EAs

Environmental consultants areprofessionals with ethical standards, but under the present system,consultants hired to perform EAs are under pressure to please the municipalor business clients who hired them. It would defy credibility to imaginethat a consultant who wishes to remain in business can be totallyindifferent to this pressure.

In our view,consultants performing EAs should be assigned by an independent process, ora central authority such as the Ministry of the Environment. No developeror other proponent of a change in land use should be permitted to choose aconsultant to perform a mandatory EA. The cost of required EAsshould continue to be billed to the proponent. Assurance of professionalcompetence, and scales of remuneration, can be set by processes that areaccepted in many other professions.

3.2APPROPRIATE SEASONS

At present, EAs areoften performed during inappropriate seasons, when essential environmentalevidence that would be apparent in another season is not found. Yet bothmunicipal and provincial authorities routinely do not object to this, andtypically find nothing wrong with an EA unless there are publicprotests or OMB appeals. It should not be left up to private citizens tolaunch appeals, and somehow provide expert testimony at their own expense,to show that an environmental assessment was flawed. Making thesituation even worse, when private citizens can afford the cost, the localconsultants are unavailable because they are normally hired by the localauthorities and developers, and thus would be in conflict of interest.

Environmental assessments should be required to beperformed over a sufficient period of time, and during appropriate seasons,to allow a valid assessment for the typeof land under consideration. Incases where land could have high environmental significance,including significant fauna, a full 12 months is needed to perform a properassessment. While this may cause delays, that is exactly what is needed ifdestruction of natural heritage land is to be prevented in future. Also,the decision that such a thorough assessment is required cannot beleft to the judgment of a consultant who is chosen and hired by the client.

3.3 ACCEPTANCE OF CREDIBLEEVIDENCE

In many cases, some localresidents have valuable environmental knowledge of lands subject to an EA,but that knowledge is neither sought nor welcomed.

Consultants, municipal councils, the OMB and the Ministry of theEnvironment should be required to consider evidence from qualified orotherwise credible third parties in making or accepting the results of anEA. If that evidence is rejected, reasons for the rejection shouldbe documented. In other words, the involved authorities should be receptiveto all credible evidence.

3.4 ANEXAMPLE

As an example, in 2003 the Cityof Ottawa sold 177 acres to a quarry developer, despite data from qualifiedindependent experts that the land contained significant and even nationallyendangered plant species. Such evidence of high environmentalsignificance should require that an EA be conducted in stages,from early Spring to late Summer. However, the new owner's EA consultantdid not find even one of the cited species, ignoring prior advice andoffers of assistance in locating them. After protests, the City ofOttawa ordered a second EA, which was so far removed from the first onethat the City felt obliged to order a Peer Review of the findings. Ofcourse, had proper environmental policies been in place, the City shouldhave been obliged to order a complete EA before being allowed tosell the land, but we understand that such policies go beyond the scope ofthe EA Review Panel.

4. SUMMATION

Wepropose three fundamental reforms to the EA process. Consultants performingEAs should be assigned by an independent process or a central authority.Environmental assessments should be required to be performed over asufficient period of time, and during appropriate seasons.Consultants, municipal councils, the OMB and the Ministry of theEnvironment should be required to consider evidence from qualified orotherwise credible third parties. **To a large extent, the threeproposed reforms are interdependent, such that the absence of any one ofthem will seriously impair the effectiveness of the others.**

SUBMITTED BY

StanRosenbaum
Chair, ConservationCommittee, The Ottawa Field-Naturalists' Club
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Batchewana First Nation
Caldwell First Nation
Delaware Nation
Hiawatha First Nation
Mississaugas of New Credit
Mohawks of the Bay of Quinte
Oneida Nation of the Thames
Wahta Mohawks

October 29, 2004

Blair Rohaly, Project Manager
Strategic Policy Branch
135 St. Clair Ave. West, 11th floor
Toronto, Ontario, M4V 1P5
PHONE: (416) 212-4083 FAX: (416) 314-2976

To: Blair Rohaly, Project Manager

Re: Improvements to Ontario's Environmental Assessment Process

We thank you for taking the time to include our comments and participation in the environmental assessment review. First Nations and PTO's such as the Association of Iroquois and Allied Indians do have concerns with provincial environmental assessment (EA).

First, as an issue of provincial practice, have not been formally included in Ontario's EA process beyond that of a stakeholder. Secondly, our concern is that the current Ontario process does not address aboriginal and treaty issues within the EA process.

Ontario's overall approach is that environmental assessment is simply a planning tool and is a process that is proponent driven. Proponents are given general guidelines by the Province to consult with First Nations; and we are aware that INAC may have some vague role in how First Nations are consulted. We are not confident, as First Nations, that the province and federal government have properly coordinated their approaches to ensure the best interests of First Nations.

The provincial EA process, as far as we are concerned, does not address:

i) Transboundary effects: The transboundary interests of First Nations, who are viewed as being confined to a "reserve" land base and that all First Nations interests stop at the reserve boundaries
ii) First Nations treaty and aboriginal rights: These rights are viewed as an issue for the federal government; and does not take a whollistic view that functioning ecosystems are necessary to the exercise of those rights in which the province must also uphold the honour of the Crown in recognizing First Nations rights and interests
iii) First Nations Governments: First Nations are addressed as stakeholders and not as governments with decision making authority

iv) First Nation Resources and Capacity: Currently, First Nations and PTO's do not have extensive human resource capacity in environmental issues to consult their Band members.

Under the provincial approach to environmental assessment, individual PTO's and First Nations are inundated with provincial environmental assessment documents that we must respond to. The reason for this, as we see it, is that the province views the First Nations as a federal concern. In turn, INAC takes a hands-off approach that the First Nation can best speak to their issues on provincial endeavors and environmental impacts from provincial development. However, neither the provincial or federal approach considers that First Nations are not resourced to adequately respond to these issues as these issues are often of a technical nature in terms of science and policy process. This is an issue that must be addressed in the environmental assessment review; as an issue of *appropriate roles*.

It is of concern to us as a PTO that under the provincial process that our PTO name appears on a list of groups that have received EA mail outs, and that this is consultation. As a PTO we are not in a position, legally or technically, able to provide appropriate comments on EA mail outs and reports on behalf of our Member Nations. Under a new and improved Ontario EA system we would hope that there would be more meaningful efforts to consult First Nations.

Also, First Nations in Ontario do have EA responsibilities and yet are not asked to participate nor do we have a seat at tables such as the Regional Environmental Assessment Committee. First Nations do ~~we~~ have a role at that table. For instance, when First Nations proponents want to access federal funding for economic development projects, the individual First Nation proponent and Band Councils are required to complete either CEAA environmental screening or conduct comprehensive environmental assessment for economic development funding. In the case of a screening, it is left to Band Councils to sign off on these documents; with INAC's rubber stamp of final approval. Under these federal initiatives First Nations are functioning as governments yet we are not recognized as such and are given little resources and opportunities for capacity development in these areas.

While the province may view these issues as federal issues, there is a real possibility that a Band Council may sign off on an environmental screening that has impacts on provincial jurisdiction. INAC's final nod of approval would be based on the fact that it is the First Nation that should know the potential off-reserve environmental impacts of developments on reserve. It should be of concern to the province that INAC has downloaded some of its environmental assessment activities to individual proponents and to Band Councils, without ensuring that there is corresponding capacity or networking ability amongst other practitioners, including those under functioning provincial regimes.

How are these issues to be communicated between jurisdictions and through what forums and processes? Ontario is in a position to address these issues in its review to improve environmental assessment. We have also noticed that there is no aboriginal representation on the Panel. The proper address of aboriginal issues under provincial environmental assessment is an outstanding issue; and in some instances has affected the timely completion of environmental assessment reviews.

At this time we are not in a position to provide further input and analysis into the process, because we simply do not have the capacity and resources. We would hope that you would make recommendations to the Minister to address this issue.

We hope that you will consider our concerns in your improvements to provincial environmental assessment.

Sincerely,

Rolanda for

Grand Chief Chris McCormick
Association of Iroquois and Allied Indians

theDon DON WATERSHED REGENERATION COUNCIL

November 1, 2004

By Fax: 416-314-2976
Hard Copy to Follow

Mr. Blair Rohaly, Project Manager
Strategic Policy Branch
Ministry of the Environment
135 St. Clair Avenue West, 11th Floor
Toronto ON M4V 1P5

Dear Mr. Rohaly:

Re: Improvements to Ontario's Environmental Assessment Process
EBR Registry Number: XA04E0015

The Don Watershed Regeneration Council (DWRC) is composed of volunteer representatives of Don watershed stakeholder groups and municipal council members who work with Toronto and Region Conservation (TRCA) to achieve the vision of a revitalized urban river and watershed. A comprehensive regeneration strategy -- *Forty Steps to a New Don* -- was endorsed in 1994 and through the efforts of thousands of volunteers and in partnership with other environmental groups we are making some progress towards this goal.

As well as advising the TRCA on matters related to comprehensive watershed planning, the DWRC provides comments to other government agencies (federal, provincial and municipal) on matters pertaining to the interests and activities of the Environmental Non-Governmental Organizations (ENGOs) making up the DWRC.

The Don Watershed Regeneration Council is pleased to provide our comments and recommendations for Improvements to Ontario's Environmental Assessment Process for the consideration of Minister Dombrowsky's Advisory Panel. The Council supports the review of the Environmental Assessment process to improve the process by establishing clear, prescriptive rules; improving the decision-making/approval process, enhancing the public participation process; and revamping the monitoring and reporting process.

Please find attached the Don Watershed Regeneration Council comments and recommendations regarding Improvements to Ontario's Environmental Assessment Process dated October 28, 2004.

Yours truly,

Melvyn Plewes
Chair, Policy and Advocacy Team

MP/BT/at

Attach: Comments by the Don Watershed Regeneration Council on *Improvements to Ontario's EA Process EBR Registry Number XA04E0015*

Cc: The Honourable Leona Dombrowsky, Minister of the Environment

theDon DON WATERSHED REGENERATION COUNCIL

Comments by the Don Watershed Regeneration Council on Improvements to Ontario's EA Process

EBR Registry Number XA04E0015

BACKGROUND ON THE DON WATERSHED REGENERATION COUNCIL – WHO ARE WE?

The Don Watershed Regeneration Council (DWRC) is a volunteer, watershed-wide advisory committee established by Toronto and Region Conservation (TRCA) in 1994 to help restore the Don River watershed to healthy, sustainable natural environment. The DWRC is composed of community members, elected officials and representatives from municipalities, agencies, businesses, environmental non-governmental organizations (ENGOs) and academic institutions located within the watershed boundary. The DWRC is a subcommittee of the TRCA's Watershed Management Advisory Board. A comprehensive strategy – *Forty Steps to a New Don* – was endorsed in 1994 and through the efforts of thousands of volunteers and in partnership with municipalities and other environmental groups we are achieving some progress in applying the strategy. Three major principles guide us – protect what is healthy, regenerate what is degraded and take responsibility for the Don.

Since then, we have produced three report cards that document the need for bold steps to ensure that the Don Watershed is protected and enhanced.

DWRC COMMENTS ON IMPROVEMENTS TO ONTARIO'S EA PROCESS

General - Purpose of the EA Process

The purpose of Ontario's Environmental Assessment process as originally designed, is to ensure that proponents consider environmental effects at an early stage in planning projects so that negative impacts could be avoided to the greatest extent possible. This precautionary or preventative approach is to ensure that proponents consider alternative types of projects to choose the one that is the most beneficial in terms of meeting the proponent's goals (or solving their problems) while minimizing environmental impacts. As a secondary measure, the environmental assessment process is to ensure that residual environmental impacts are mitigated through alternative means of carrying out the projects or post construction remediation. It is also envisioned, that the proponent might sometimes determine that proceeding with any undertaking is inappropriate where significant environmental impacts will occur.

In undertaking the current review to identify improvements to Ontario's EA process, the Panel is encouraged to ensure that the original purpose of the EA process is enhanced and achieved. Recent experience indicates that the proponents are focusing on how to remediate the negative impacts associated with their projects more than they are considering alternatives to their undertaking that would avoid the environmental impacts in the first place.

Often, the focus of the environmental assessment process is the preparation of the environmental assessment document rather than on ensuring sound environmental planning.

RESPONSE TO PANEL'S TERMS OF REFERENCE

1.0 NEED FOR PRESCRIPTIVE REQUIREMENTS, POLICIES & TECHNICAL GUIDELINES

1.1 **The DWRC supports the need to establish clear, prescriptive rules for proponents.**
These rules should deal with both the initial phase of the project prior to establishing Terms of Reference (TOR), as well as the subsequent phases.

The rules should be flexible enough to eliminate significant work on factors which are of limited relevance in the specific case and allow more emphasis on those that have emerged as true impacts and issues to be addressed.
For example, prescriptive requirements are needed for public consultation. Routine public information centres are not sufficient to allow the public to understand the process and the details of the project. (see also comments under section 3 below).

In addition, proponents often pursue projects which are being proposed to address perceived problems. True, meaningful engagement of the stakeholders is essential to ensure that the solutions address the broad community need.

Experience in the United States on the use of Context Sensitive Solutions/Design may offer an improved process for stakeholder engagement and solution development. Further information on this approach can be found in the National Cooperative Highway Research Program (NCHRP) report titled *A Guide to Best Practices for Achieving Context Sensitive Solutions* (NCHRP Report 480) - http://trb.org/publications/nchrp/nchrp_rpt_480.pdf.

1.2 **The DWRC recommends that the MOE establish requirements for the Terms of Reference.**

1.2.1 **We recommend that it become mandatory for the proponent's TOR to outline how impacts of projects on ecosystem form and function will be considered in addition to impacts that may occur on the various species or communities affected by the project.**

Cumulative impacts of previous or related projects must also be considered. In an area like the Don Watershed with very limited natural areas and considerable fragmentation, each new project is extremely significant on the long-term viability of the watershed and the potential remediation. The list appended to this document inventories the almost 40 EA projects (Class EAs, Individual EAs and EA Master Plans and Studies) in the Don Watershed since 2000. A map of the Don Watershed boundaries is also appended for your reference. This intensive activity has significant and unassessed cumulative impacts (see also comments in section 2.1.2 below).

1.2.2 **The DWRC continues to endorse and advocate that watershed and sub-watersheds provide the preferred geographic area proponents should be considering in assessing the impacts from development proposals.**

We have previously submitted comments on this issue in our submissions on the Source Drinking Water Source Protection Act and Policy to the Ministry of the Environment. Copies are available for your consideration, if you wish.

1.2.3 **The DWRC recommends that proponents should be required to address, and to report on overarching environmental sustainability impacts, such as global warming, air quality, resource conservation, and source water protection impacts of the alternatives and the proposed undertaking.**

1.3 **The DWRC recommends that the Ontario government ensure better integration of planning and environmental decisions so that sustainable communities can be developed.**

The apparent disconnect between the land use planning decisions made under *The Planning Act* and decisions on projects and undertakings under *The Environmental Assessment Act*, creates the serious problem of piecemealing municipal decision-making on the related matters. Municipal, or provincial, approval of a new subdivision results in demand for new roads, transit, waste, energy, water and sewage infrastructure and other services to match the needs of the new residents. Carrying out any of these subsequent municipal government actions will trigger the EA Act either as individual or class EA projects. When the EAs are carried out, proponents (often the municipality that made the land use decisions) claim that they have no alternatives but to build the new road or install new infrastructure – the classic model of piecemealing.

It is recommended that the servicing issues inherent in the land use planning decisions are explicitly considered at an early stage and in sufficient detail so that the environmental impacts of the ancillary services can be assessed/avoided at the land use planning stage. In other words, the land use planning decisions should be integrated with the master plan process typically undertaken as part of the infrastructure planning process and the environmental assessment requirements for the specific infrastructure undertakings.

1.4 **The DWRC recommends that provincial guidelines which set out provincial priorities, like the Provincial Policy Statements under *The Planning Act*, established by the appropriate provincial ministries with which proponents must comply when planning and/or carrying out undertakings.**

The relevant provincial guidelines should form part of the TOR for the proponent.

2.0 DECISION-MAKING/APPROVAL PROCESS

2.1 The DWRC has concerns about the projects which have been or are being planned using the Class EA process for road and water/waste-water related projects. These concerns are generally related to projects which commence under the provisions of the Class EA process but which have significant impacts and warrant individual EA treatment; and/or have piecemealing impacts.

2.1.1 **Class EA projects with significant impacts** - Two recent/current examples in the Don Watershed are road projects in the Region of York to open unopened road allowances and to increase the number of traffic lanes in areas of recognized provincial and local natural environment significance and where significant natural environment impacts from the project were anticipated. The proposed Teston Side Road and Pine Valley Drive projects were both started as Class EA projects and are now, or have been promised to be carried out by the Regional Municipality of York as individual EAs due to significant public concern and objection to the proposals.

As can be imagined, since the Region has already identified a plan to construct specific right-of-ways it is hard to expect that the Region can go back now and carry out a proper individual EA with consideration of alternatives to building the road to service the expected needs of residents in areas planned for, but not yet built out.

The Environmental Commissioner in *Choosing Our Legacy* has also documented a number of problems with the Class EA for Municipal Projects and the Class EA process in general. We concur with his findings found on pages 56 to 59.

It is recommended that consideration be given to limiting the application of the Class EA process to road projects by introducing more restrictions on the types of projects that can be carried out under the Class EA approval.

2.1.2 **Piecemealing/Incrementalism Concerns** – As described in items 1.2. and 1.3 above, incremental impacts from projects and piecemealing makes it very difficult to protect and remediate natural areas and ecosystems in the Don Watershed. Appended to this submission is list of the approximately 40 EA projects under review, planned or built in the Don Watershed since 2000.

It is beyond our ability as the DWRC to be able to ascertain the cumulative impact of all these projects on the objectives and goals set out in *Forty-Steps to a New Don*. It is also extremely difficult to provide meaningful comment and criticism during the review phase of an EA or a Class EA.

It is recommended that a regular review of the cumulative impact of projects within key geographical areas, such as watersheds, be undertaken by the province and Conservation Authorities to refine and set out environmental protection goals and restrictions on environmental impacts so that viable ecosystem function can be maintained and restored.

The DWRC would be pleased to assist the Province, the Toronto Region Conservation Authority and other partners to undertake a demonstration project in the Don Watershed to pilot this approach.

3.0 PUBLIC PARTICIPATION

3.1 The DWRC observes that the public participation process is very difficult unless the individuals are well-versed with the EA process. The process largely relies on stakeholders identifying themselves to the process rather than the process endeavouring to identify stakeholders and draw them in with meaningful engagement. Typically, proponents try to keep under the radar and reduce opposition rather than seeking it out and determining how to develop a solution that fits the situation. To permit interested groups to provide meaningful participation, they need to have sufficient lead-time to get involved. The short deadlines for comments frequently make it a scramble to provide comment or to find out in time to participate.

The Environmental Commissioner (ECO) in his recently released Annual Report for 2003-2004, *Choosing Our Legacy*, has also highlighted weaknesses of the current public consultation processes under *The Environmental Assessment Act*, which mirror the experience and frustrations of the DWRC. The findings of the ECO regarding the shortcomings of the Class EA process for Municipal projects are particularly relevant to the problems we have outlined in this submission (see pages 56 to 57 of *Choosing Our Legacy*).

3.2 The DWRC recognizes that developing TOR for projects can be appropriate where sufficient work has been undertaken to allow for understanding of the issues and conditions within the study area. Some scoping of a project at the TOR stage allows for some engagement of the stakeholders and certainty for both sides of the process.

However, to have meaningful input, it is necessary to have a greater opportunity to participate. When at the TOR stage there are only study area "blobs" and promises for more detail at the EA stage because the TOR cannot even identify the type of project that is being considered does not permit stakeholders to make meaningful comments and to assess if their comments are subsequently addressed. See also comment under section 1.1 above on the use of Context

Sensitive Solutions/Design as one approach to improving the process for stakeholder engagement and solution development.

3.3 In the case of TOR, environmental non-governmental organizations and individuals experience great difficulty in providing comments because of the generality of the TOR and the fact that they are posted only on the ministry's website. This situation weakens the whole EA process since the TOR limits the scope of what will be subsequently studied.

3.4 **It is recommended that the province provide a free subscription service and list that would provide advance notice of upcoming EAs within a geographical area or type of EA.**

This service would reduce the need for individuals and ENGOs to check out the EBR Registry on a regular basis and provide the opportunity for more constructive involvement in the EA planning process. For community groups that do subscribe to the EA service notices, it is recommended that the province provide information sessions on a regular basis to describe the EA process and how to contribute and participate.

4.0 MONITORING AND REPORTING

The activity of monitoring and reporting on post-construction effects and mitigation is problematic.

Are the conditions of approval monitored? Does the information learned on one project get carried forwarded or transferred to improve the next project? How does an individual or ENGO access the information? How are cumulative impacts assessed? Who guarantees the authenticity of the data and information and study results? How can a group like the DWRC be assured that our concerns have been addressed when the issues are raised?

This issue requires, and deserves, immediate attention by the Ministry of the Environment, the approval authority under the Environmental Assessment Act.

October 28, 2004

APPENDIX 1

EA Projects in the Don Watershed
2000 to Present

EA RELATED MASTER PLANS AND STUDIES

York-Peel Feedermain Long Term Water Project Master Plan Update
York-Durham Trunk Sewer System Master Plan
Transportation Master Plan YR (Spin Off EA Files - Hwy 7 corridor, Yonge St corridor, Markham N/S Link, Woodbine Ave Transp. Study)
Master Plan for the Central Business District/Village Core Yonge Street Area
Aurora/Newmarket Water Supply
Borough of East York Rosemount Heights Combined Sewer and Siphon
Dufferin Street Langstaff to Rutherford
Bathurst Street Widening Gamble Rd to Hwy 9

ONGOING EAs

EAs Received in 2000

YDSS Bathurst Collector/Langstaff Trunk Sewer
Teston Road Pine Valley to Bathurst
Yonge Street Corridor Transitway Steeles to Bloomington
Highway 400 Major MacKenzie to 16th SR/Vandorf Road

EAs Received in 2001

Lesmill Road Improvements Between Leslie St. and Duncan Mill Road
Hwy 7 Corridor Albion/Vaughan to York/Durham

EAs Received in 2002

York Durham Sewage System Southeast Collector
York-Peel Feedermain Route Selection Airport to Keele in the Vicinity of Rutherford
Toronto Waterfront Revitalization Concept
Lower Don River Naturalization and Flood Protection EA
Go Transit Lakeshore East Corridor Rail Bayview to McCowan

EAs Received in 2003

Extension Maple Pressure District 7 Watermain Network
Don Valley Corridor Master Plan Waterfront to Steeles Avenue
Portlands Energy Centre
Surface Transit on Yonge Street Finch Avenue to Steeles Avenue
Go Transit - Temporary Layover Facility
Hogg's Hollow Stormwater Management and Road Improvement Study
Hwy 401 Rehabilitation Avenue Road to Hwy 404
Major Mackenzie Road PD6 Watermain Dufferin to Bathurst

EAs Received in 2004
Toronto Portlands System Reinforcement
Spadina Subway Extension
Biosolids and Residuals Mater Plan
Highway 404 Mid-Block Crossing Highway 7 to 16th Avenue
Earl Bales Park Area Stormwater Management Plan

COMPLETED EAs
EAs Received Prior to 2000 - Now Complete
Rutherford Road Weston Road to Jane Street
Highway 7 Hwy 27 to Kipling Avenue
Centre Street Improvements

EAs Received in 2001- Now Complete
O'Connor Drive Improvements Bermondsey Rd to Victoria Park

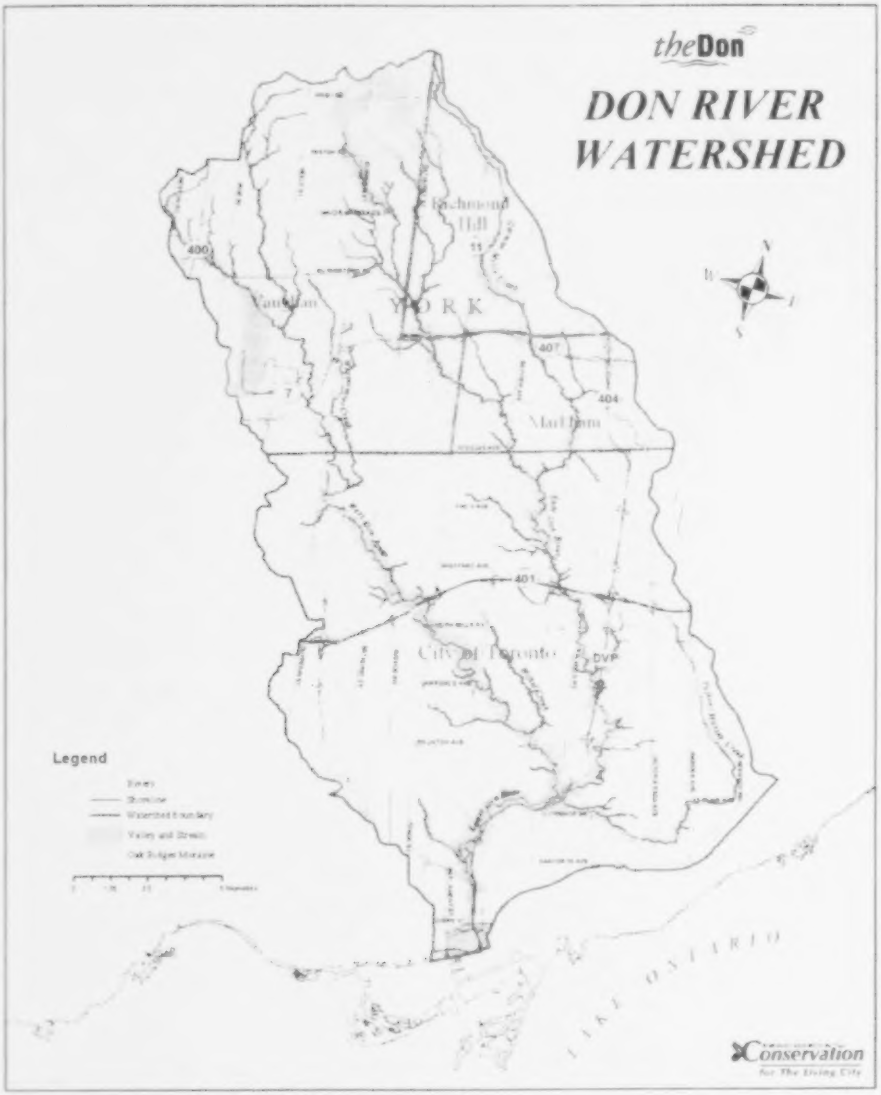
EAs Received in 2002- Now Complete
Keele Street Hwy 407 to Highway 7

EAs Received in 2003- Now Complete
ORC Topsoil Distribution

EAs Received in 2004 - Now Complete
Sanitary Sewer Improvements - District 3

APPEDIX 2

MAP OF THE DON RIVER WATERSHED


theDon
DON RIVER WATERSHED
Richmond Hill
YORK
Vaughan
Markham
City of Toronto
400
407
404
401
7
11
DVP
LAKE ONTARIO
N
E
S
W
Legend
Rivers
Shoreline
Watershed Boundary
Valley and Stream
Oak Ridges Moraine
Conservation for The Living City

THE ETOBICOKE AND MIMICO
CREEK WATERSHEDS COALITION

October 28, 2004
Mr. Blair Rohaly, Project Manager
Strategic Policy Branch
Ministry of the Environment
135 St. Clair Avenue West, 11th Floor
Toronto ON M4V 1P5

Dear Mr. Rohaly:

Re: Improvements to Ontario's Environmental Assessment Process
EBR Registry Number: XA04E0015

The Etobicoke-Mimico Creek Watersheds Coalition is composed of volunteer representatives of Etobicoke-Mimico watershed stakeholder groups and municipal representatives who work with Toronto and Region Conservation (TRCA) to achieve the vision of revitalized rivers/creeks and their watersheds. A comprehensive revitalization strategy -- Greening Our Watersheds -- was endorsed in 2002 and through the efforts of thousands of volunteers and in partnership with other environmental groups we are making some progress towards this goal.

The Etobicoke-Mimico Creek Watersheds Coalition is pleased to provide our comments and recommendations for Improvements to Ontario's Environmental Assessment Process for the consideration of Minister Dombrowsky's Advisory Panel. The Coalition supports the review of the Environmental Assessment process to establish clear and prescriptive rules; to improve decision-making/approval process; enhance the public participation process; and revamp the monitoring and reporting process.

Please find attached the The Etobicoke-Mimico Creek Watersheds Coalition comments and recommendations regarding Improvements to Ontario's Environmental Assessment Process dated October 28, 2004.

Yours truly,

Irene Jones

Co-Chair, Etobicoke-Mimico Watersheds Coalition

Susan Barrett

Co-Chair, Etobicoke-Mimico Watersheds Coalition

Attach: Comments by the The Etobicoke-Mimico Creek Watersheds Coalition On Improvements to Ontario's EA Process EBR Registry Number XA04E0015

Cc: The Honourable Leona Dombrowsky, Minister of the Environment

THE ETOBICOKE AND MIMICO
CREEK WATERSHEDS COALITION

ETOBICOKE-MIMICO CREEK WATERSHEDS COALITION

Comments by The Etobicoke-Mimico Creek Watersheds Coalition
On
Improvements to Ontario's EA Process
EBR Registry Number XA04E0015

The Etobicoke-Mimico Watersheds Coalition (The Coalition) is composed of volunteer representatives of Etobicoke-Mimico watershed stakeholder groups and municipal representatives who work with Toronto and Region Conservation (TRCA) to achieve the vision of revitalized rivers/creeks and watershed. A comprehensive revitalization strategy -- Greening Our Watersheds -- was endorsed in 2002 and through the efforts of thousands of volunteers and in partnership with other environmental groups we are making some progress towards this goal.

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Often, the focus of the environmental assessment process is the preparation of the environmental assessment document rather than ensuring sound environmental planning.

Response to Panel's Terms of Reference

1.0 Need for Prescriptive Requirements, Policies & Technical Guidelines

1.1 **The Coalition supports the need to establish clear, prescriptive rules for proponents.**

These rules should deal with both the initial phase of the project prior to establishing Terms of Reference, as well as the subsequent phases.

The rules should be flexible enough to eliminate significant work on factors which are of limited relevance in the specific case and allow more emphasis on those that have emerged as true impacts and issues to be addressed. Prescriptive requirements are needed for public consultation. Routine public information centres are not sufficient to allow the public to understand the process and the details of the projects. (see also comments under section 3 below).

In addition, proponents often pursue solutions to address perceived problems. True, meaningful engagement of the stakeholders is essential to ensure that the solutions address the actual needs of the broad community.

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1.2 **The Coalition recommends that the MOE establish requirements for the Terms of Reference.**

1.2.1 **We recommend that it become mandatory for the proponent's TOR to outline how impacts of projects on ecosystem form and function will be considered in addition to impacts that may occur on the various species or communities affected by the project.**

Cumulative impacts of previous or related projects must also be considered. In fully developed watersheds like the Etobicoke and Mimico Creek Watersheds with very limited natural areas and considerable fragmentation, each new project is extremely significant for the long-term viability of the watershed and the potential remediation.

1.2.2 **The Coalition continues to endorse and advocate that watersheds and sub-watersheds provide the preferred geographic area that proponents should be considering in assessing the impacts from development proposals.**

1.2.3 **The Coalition recommends that proponents should be required to address, and to report on overarching environmental sustainability impacts, such as global warming, air quality, resource conservation, and source water protection impacts of the alternatives and the proposed undertaking.**

1.3 **The Coalition recommends that the Ontario government ensure better integration of planning and environmental assessment process so that sustainable communities can be developed.**

The apparent disconnect between the processes and decisions made under The Planning Act and The Environmental Assessment Act, creates the serious problem of piece-mealing municipal decision-making on related matters. Municipal or provincial approval of a new subdivision results in demand for new roads, transit, waste, energy, water and sewage infrastructure and other services to match the needs of the new residents. Carrying out any of these subsequent municipal government actions will trigger the EA Act either as individual or class EA projects. When the EAs are carried out, proponents (often the municipality that made the land use decisions) claim that they have no alternatives but to build the new road or install new infrastructure – a classic model of piecemeal decision making.

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In other words, the land use planning decisions should be integrated with the master plan process typically undertaken as part of the infrastructure planning process and the environmental assessment requirements for the specific infrastructure undertakings.

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The relevant provincial guidelines should form part of the TOR for the proponent.

2.0 Decision-making/Approval Process

2.1 **It is recommended that consideration be given to limiting the application of the Class EA process to road projects by introducing more restrictions on the types of projects that can be carried out under the Class EA approval.**
The Coalition has concerns about projects which have been or are being planned using the Class EA process for road and water/waste-water related projects. These concerns are generally related to projects which commence under the provisions of the Class EA process but which have significant impacts and warrant individual EA treatment; and/or projects that have piece-meal impacts as discussed above.

The Environmental Commissioner in Choosing Our Legacy has also documented a number of problems with the Class EA for Municipal Projects and the Class EA process in general. We concur with his findings found on pages 56 to 59.

2.2 **The Coalition recommends that a regular review of the cumulative impact of projects within key geographical areas, such as watersheds, be undertaken by the province and Conservation Authorities to refine and set out environmental protection goals and restrictions on environmental impacts so that viable ecosystem function can be maintained and restored.**

As described in items 1.2. and 1.3 above, **Incremental impacts from projects and piece-mealing** makes it very difficult to protect and remediate natural areas and ecosystems in the Watershed. It is beyond the ability of community groups and the Coalition to be able to ascertain the cumulative impact of these projects on the objectives and goals set out in Greening Our Watersheds: Revitalization Strategies for Etobicoke-Mimico Creeks. It is also extremely difficult to provide meaningful comment and criticism during the review phase of an EA or a Class EA.

3.0 Public Participation

The Coalition observes that the public participation process is very difficult unless the individuals are well-versed with the EA process. The process largely relies on stakeholders identifying themselves to the process rather than the process endeavouring to identify stakeholders and draw them in with meaningful engagement. Typically, proponents try to keep under the radar and reduce opposition rather than seeking it out and determining how to develop a solution that fits the situation. To permit interested groups to provide meaningful participation, they need to have sufficient lead-time to get involved. The short deadlines for comments frequently make it a scramble to provide comment or to find out in time to participate.

The Environmental Commissioner (ECO) in his recently released Annual Report for 2003-2004, Choosing Our Legacy, has also highlighted weaknesses of the current public consultation processes under The Environmental Assessment Act, which mirror the experience and frustrations of the Coalition. The findings of the ECO regarding the shortcomings of the Class EA process for Municipal projects are particularly relevant to the problems we have outlined in this submission (see pages 56 to 57 of Choosing Our Legacy).

The Coalition recognizes that developing Terms of Reference for projects can be appropriate where sufficient work has been undertaken to allow for understanding of the issues and conditions within the study area. Some scoping of a project at the TOR stage allows for some engagement of the stakeholders and certainty for both sides of the process.

However, to have meaningful input, it is necessary to have a greater opportunity to participate. When at the TOR stage there are only study area "blobs" and promises for more detail at the EA stage because the TOR cannot identify the type of project that is being considered, stakeholders are not able to make meaningful comments and to assess if their comments are subsequently addressed. See also comment under section 1.1 above on the use of Context Sensitive Solutions/Design as one approach to improving the process for stakeholder engagement and solution development

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This service would reduce the need for individuals and ENGOs to check out the EBR Registry on a regular basis and provide the opportunity for more constructive involvement in the EA planning process.

In the case of TOR, ENGOs and individuals experience great difficulty in providing comments because of the generality of the TOR and the fact that they are posted only on the ministry's web-site. This situation weakens the entire EA process since the TOR limits the scope of what will be subsequently studied.

4.0 Monitoring and Reporting

The activity of monitoring and reporting on post-construction effects and mitigation is problematic.

Are the conditions of approval monitored? Are the lessons learned on one project carried forwarded or transferred to improve the next project? How does an individual or ENGO access the information? How are cumulative impacts assessed? Who guarantees the authenticity of the data and information and study results? How can a group like the Etobicoke-Mimico Creek Watersheds Coalition be assured that our concerns have been addressed when the issues are raised?

4.1 It is recommended that the issue of monitoring and reporting should be given immediate attention by the Ministry of the Environment, the approval authority under the Environmental Assessment Act.

Rohaly, Blair (ENE)

From: Bill Foster - Sympatico [billfoster@sympatico.ca]
Sent: Friday, November 12, 2004 11:18 AM
To: Rohaly, Blair (ENE)
Subject: Improvements To Ontarios Environmental Assessment Process - EA Advisory panel - Submission.

I apologize for my late submission to this project. My submission is actually a copy of an earlier submission to the Canadian Environmental Assessment Agency that addresses the shortcomings of a provincial EA conducted by MTO. I believe your panel will find this to be of significant interest. The submission can be found at the following URL: http://www.ceaa.gc.ca/013/001/0002/0004/0001/frogs_e.htm

C.W.D. Foster
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RR # 1
Newmarket, ON
Canada
905-836-0663

Canadian Environmental Assessment Agency
Agence canadienne d'évaluation environnementale
Canada

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[FORBID ROADS OVER GREEN SPACES]

February 26, 2000

Ms. Ghislaine Kerry Five Year Review Canadian Environmental Assessment Agency 200 SacreCoeur Boulevard 14th Floor, Fontaine Building Hull, Quebec K1A OH3

Dear Ms. Kerry:

Re: Canadian Environmental Assessment Act Fiveyear Review

Our association, Forbid Roads Over Green Spaces, (F. R. 0. G. S.), is pleased to be given this opportunity to comment on the five year review of the Canadian Environmental Assessment Act, (the Act). By way of preliminary comments, we wish to state that we fully agree with two of the three guiding principles set out in Part 2 of your agency's Discussion Paper for Public Consultation dated December 1999. We fully agree that: *"the environmental assessment process should be applied as early in the project's planning stages as practicable, before irrevocable decisions are made, so that environmentalfactors are incorporated into decisions in the same way that economic, social and policy factors have traditionally been incorporated.* " We also support the need for a high degree of public participation. Based on our experience, however, we have serious concerns with respect to the principal of *"self directed assessment"*, at least with respect to assessments where there is a shared jurisdiction between the one or more federal and provincial parties.

From our perspective, where a provincial party is the proponent of a project which will trigger a federal assessment, it is not sufficient for the Canadian Environmental Assessment Agency, (CEAA), to only become involved upon the completion of the Environmental Assessment Study by the provincial proponent. This practice forecloses the ability of the federal government to incorporate national environmental objectives or international commitments into the planning stages of the Environmental Assessment Study. By the time a federal assessment is triggered by a Law List Regulation, a provincial proponent has already sought and obtained approval for the undertaking from the provincial Minister of the Environment. It is very difficult, if not impossible for CEAA to have any real influence on the proposed project at such a late date with respect to matters concerning scoping, need, justification or the selection or consideration of reasonable alternatives. At best, CEAA is left to comment on matters relating to mitigation.

We do not believe it is appropriate for CEAA to delegate these activities to a proponent with a shared jurisdiction. We believe the federal government has an obligation separate and apart from that of a provincial proponent. We look to CEAA to provide a national perspective to major provincial initiatives. We are concerned that unless major provincial initiatives are viewed from a national perspective, the objectives of the Act will not be met.

An example of this type of situation recently occurred in the Town of Richmond Hill, Ontario. The town is being pressured by developers to permit development of approximately 17,000 acres of environmentally sensitive lands on the Oak Ridges Moraine. Some 460 scientists have written to the town urging that development not be permitted on this environmentally sensitive land. The province of Ontario has refused to intervene. Rather, the province is proposing an expansion of Highway 404 to three lanes in each direction to better serve the growing commuter needs in this area and the more northern portions of York Region. Clearly, from an environmental assessment perspective, there is neither need nor justification for this proposed development on the Oak Ridges Moraine. The continued urban sprawl in York Region supported by Ontario's Minister of Transportation through the creation of additional highways, rather than mass transit systems, would seem to be in direct opposition to Canada's national objectives and commitments with respect to the reduction of greenhouse gases and air pollution.

M. T. 0.'s Bradford Bvpass Environmental Assessment Study

Our experience with respect to the current shortcomings of the Act is based on the Ontario Ministry of Transportation's, (M . T. O.), Bradford Bypass Environmental Assessment Study. This study was commenced in 1993. At the outset M. T. O. noted that a federal environmental approval would be required from both the Department of Fisheries and the Canadian Coast Guard. The proposed scoping for the study, (the study area), was challenged by the public for reasons of its extremely limited boundaries and the fact that a parallel roadway, only 10 kilometres to the south, was the subject of a concurrent environmental assessment. This southern road was proposed as a 4/5 lane regional arterial roadway while the Bradford Bypass was to be a provincial controlled access freeway. Travel demand studies for the Bradford Bypass corridor, did not exist at the commencement of the study. Subsequent travel demand forecasts indicated the need for a freeway along the southern roadway and at best, an arterial road through the Bradford Bypass corridor. Public consultation called for the expansion of the Bradford Bypass study area to the south to incorporate this proposed southern roadway. M.T.0. refused to expand the study area and went so far as to redefine the "ProblemOpportunity Statement" to further justify its refusal to consider the more southern road way as a reasonable alternative.

The Bradford Bypass corridor crosses the southern portion of the Holland Marsh, a provincially significant class one wetland. It also crosses a major wooded wetland area which has, until now, been protected as an Environmentally Sensitive Area, [E.S.A.] or alternatively, an Area of Scientific and Natural Interest, [A.N.S.I.]. Additionally, the area is a floodplain and is subject to stringent development and fill restrictions. Our Association's members cannot understand why M.T.0. insists on building a freeway, for which there is neither need nor justification, when the southern route satisfies these tests while avoiding the highly sensitive Bradford Bypass corridor.

Several years after study commencement and work was well progressed, in response to continued public pressure, M.T.0. hired consultants to conduct a comparison study of the two routes. The consultants employed by M.T.O. to perform this comparison were the same consultants that conducted the Environmental Assessments for each of the Bradford Bypass and the southern arterial roadway. Simply put, the consultants were hired to critique their own work! As noted from the enclosed chart, this Corridor Comparison Study found that a freeway in the area of the southern route was superior from both an environmental and traffic volume perspective. Notwithstanding these findings, M.T.0. persisted with its proposed freeway in the Bradford Bypass corridor on the basis that the Bradford Bypass corridor was superior from a policy perspective.

It subsequently came to light that the technically preferred route passed over a cultural heritage landscape of possibly national significance. This cultural heritage landscape, known as the "Lower Landing", was the original terminus of Yonge Street. It was the site of three different Bands of Indian villages, the embarkation point for a number of Canada's early French and British explorers to northwestern Canada, a military base during the War of 1812, and a steamboat landing. A subsequent M.T.O. initiated phase one archaeological assessment found evidence on inhabitation dating back to 800 A.D. The Chippeaws of Georgia Island have advised M.T.0. that they consider this to be sacred ground. M.T.0.'s archaeological consultants have cautioned M.T.O. about the probability of finding Indian graves on this site. They have also indicated this may be the site of Fort Gwillimbury. M.T.0. has suppressed, (or denied), all of this information from both the public and from its final Environmental Assessment Study.

In December 1998, our association submitted an extensive review of M.T.0.'s entire Bradford Bypass Environmental Assessment Study to the Ontario Ministry of Environment in response to that ministry's request for public input. A copy of our submission was Drovided to the CEAA.

We understand that the current practice of CEAA is to only become involved in provincial environmental assessment studies triggered by the Law List after approval of the EA Report by the provincial Ministry of Environment. Based on this practice, we are very concerned that CEAA may accept M.T.0.'s final Environmental Assessment Study Report at face value. If this were to occur, CEAA would be oblivious to the fact that M.T.0. placed policy considerations before sound environmental planning principals and withheld or denied important historic information when choosing its technically preferred route for this proposed new freeway.

Unfortunately, CEAA's current practice of only becoming involved at the conclusion of a provincial environmental assessment has, no doubt, resulted in nothing more than the filing, (for possible future reference), of our extensive submission on this entire study. CEAA is now seized with important information concerning a provincial initiative which will unnecessarily:

- expose a class one wetland to salt spray and potential toxic spills
- promote urban sprawl and increased automobile use
- destroy a Cultural Heritage Landscape of potentially national significance
- employ public funds for a highway for which there is neither need nor justification

We believe CEAA has, or should have, an independent and parallel responsibility for the protection of our environment. We further believe that the definition of the environment should be as broad as possible so that the full cumulative impact of major infrastructure proposals can be fully evaluated and appreciated. We support the concept of CEAA "being in until it is out" for all major projects such as this. Only by using this strategy can CEAA properly ensure that the assessment is properly scoped and conducted in a manner to effectively ensure that cumulative effects are properly evaluated and addressed and federal environmental objectives and obligations are met.

Conclusion / summary of recommendations.

We recommend that:

The definition of "Environment" be expanded to encompass all life forms which may be affected either directly or consequentially by the proposed undertaking.

Environmental Assessments should address all direct and consequential / cumulative impacts on the environment as defined above.

CEAA should adopt an "in until we are out" strategy for dealing with any joint jurisdictional undertakings where public funds, (provincial or federal), are employed. This could probably be achieved through "Harmonization Agreements" with the various jurisdictional authorities.

The Federal Government must recognize it has an independent obligation to ensure the integrity and appropriateness of all Environmental Assessments within its jurisdiction conducted by provincial or other non federal proponents. The federal government should ensure that federal objectives for matters such as greenhouse gasses and air or water pollution form an integral part of all provincial and local undertakings. If this is not done, Federal initiatives on a broad scale will be frustrated by contrary local initiatives. (ea. The Oak Ridges Moraine and urban sprawl supported by a massive highway system).

The Guiding Principle of Self Assessment needs to be fully reviewed. Proponents outside of the Federal Government are subject to pressures and may approach the Environmental Assessment process as an impediment to be overcome at the least cost with the least disruption to predetermined policies rather than an opportunity to undertake sound sustainable development.

Respectfully submitted

Paul Jafine Director R.R. 1 Newmarket ON L3Y 4V8	C.W.D. Forster Director R.R. 1, Newmarket ON L3Y 4V8

Enc.

Copy: The Hon. Tony Clement, Minister of Environment The Hon Frank Klees, Minister without Portfolio Mr. Dalton McGuinty, MPP, Leader of the Opposition The Canadian Environmental Law Association Mr. Brian McAndrew, The Toronto Star Mr. John Barber, The Globe & Mail

BRADFORD BYPASS EA
NEWMARKET CORRIDOR
GREEN LANE EA
HIGHWAY 9 WIDENING
NEWMARKET
TOWN
AURORA
WHITCHURCH

STUDY AREAS

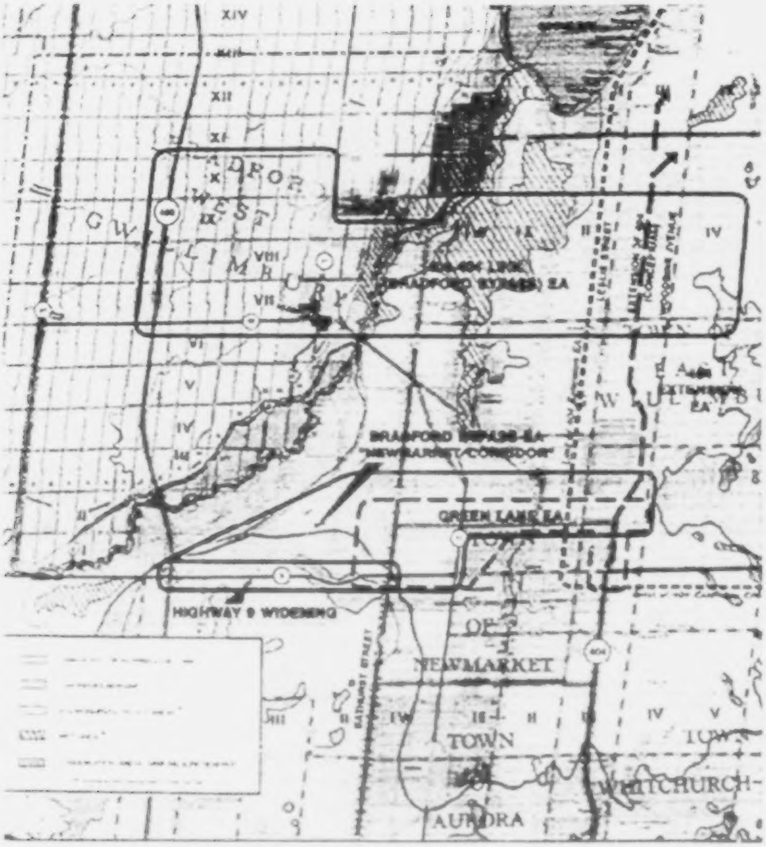
Ministry of Transportation Ontario

BRADFORD BYPASS : HIGHWAY 400 TO HIGHWAY 404 EXTENSION
ROUTE LOCATION AND PRELIMINARY DESIGN STUDY

EXHIBIT 1

Exhibit 16: Graphical Overview of Ratings of Alternative Freeway Corridors

Factor/Criterion	Alternative			Significant Difference
	Green Lane	New Freeway - Newmarket	New Freeway - Brantford	
1. TRANSPORTATION				
1.1 Traffic Operating Speed	O	O	O	
1.2 Traffic Volume	O	O	o	
1.3 Traffic Operations	O	O	O	X
1.4 Safety	•	•	•	
1.5 Efficiency	O	O	O	
1.6 Network Aspects	o	o	O	X
1.7 Financial	•	•	•	
1.8 Construction	•	•	o	X
1.9 Staging	o	•	•	X
2. NATURAL ENVIRONMENT				
2.1 Fisheries and Aquatic Habitat	O	O	o	X
2.2 Wildlife	o	o	o	


BRADFORD WEST GWILLIMBURY
400-404 LINK (BRADFORD BYPASS) EA
404 EXTENSION EA
BRADFORD BYPASS EA "NEWMARKET CORRIDOR"
GREEN LANE EA
HIGHWAY 9 WIDENING
TOWN OF NEWMARKET
TOWN
AURORA
WHITCHURCH-
TOWN
BATHURST STREET

STUDY AREAS

Ministry of Transportation Ontario | BRADFORD BYPASS : HIGHWAY 400 TO HIGHWAY 404 EXTENSION ROUTE LOCATION AND PRELIMINARY DESIGN STUDY | EXHIBIT 1

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1.6 Network Aspects	o	o	O	X
1.7 Financial	•	•	•	
1.8 Construction	•	•	o	X
1.9 Staging	o	•	•	X
2. NATURAL ENVIRONMENT				
2.1 Fisheries and Aquatic Habitat	O	O	o	X
2.2 Wildlife	o	o	o	

2.3 Vegetation	o	o	o	
2.4 Wetlands	O	O	•	X
2.5 Ground water	•	o	O	X
2.6 Surface Water	o	o	•	X
2.7 Greenways and Open Space Linkages	•	•	•	
2.8 Soil	•	•	•	
3. SOCIAL ENVIRONMENT				
3.1 Aesthetics				
3.2 Highway and Construction Noise	•	•	•	
3.3 Community / Recreation	O	O	o	
4. ECONOMIC ENVIRONMENT				
4.1 Agriculture	o	o	o	
4.2 Commercial / Industrial	O	o	o	X
4.3 Special Land Use Strategies	o	•	O	X
4.4 Property Waste and Contamination	O	O	O	
4.5 Aggregates	O	•	O	X
5. CULTURAL ENVIRONMENT				
5.1 Archeology				X
5.2 Historical	o	o	o	
6. APPLIED ENVIRONMENTAL CONDITIONS				
6.1 Stormwater Management	O	O	o	
6.2 Erossion and Sedimentation Control	•	•	•	
6.3 Sustainable Development	o	o	o	

O - Good / Most Preferred, o - Fair, • - Poor / Least Preferred

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Last Updated: 2003-10-07 ▲ Important Notices